



Charles B Andrews

May 12th 1866

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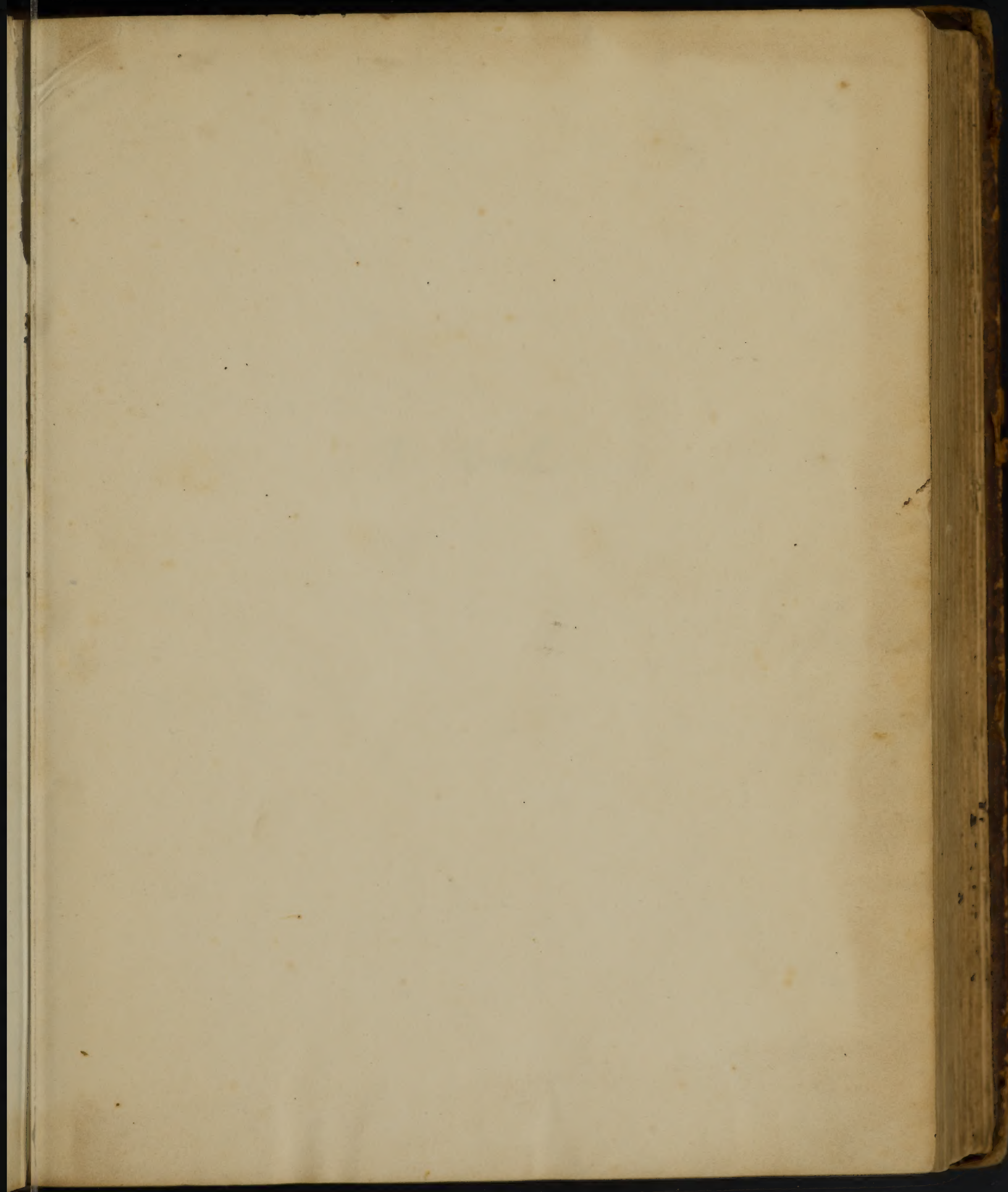


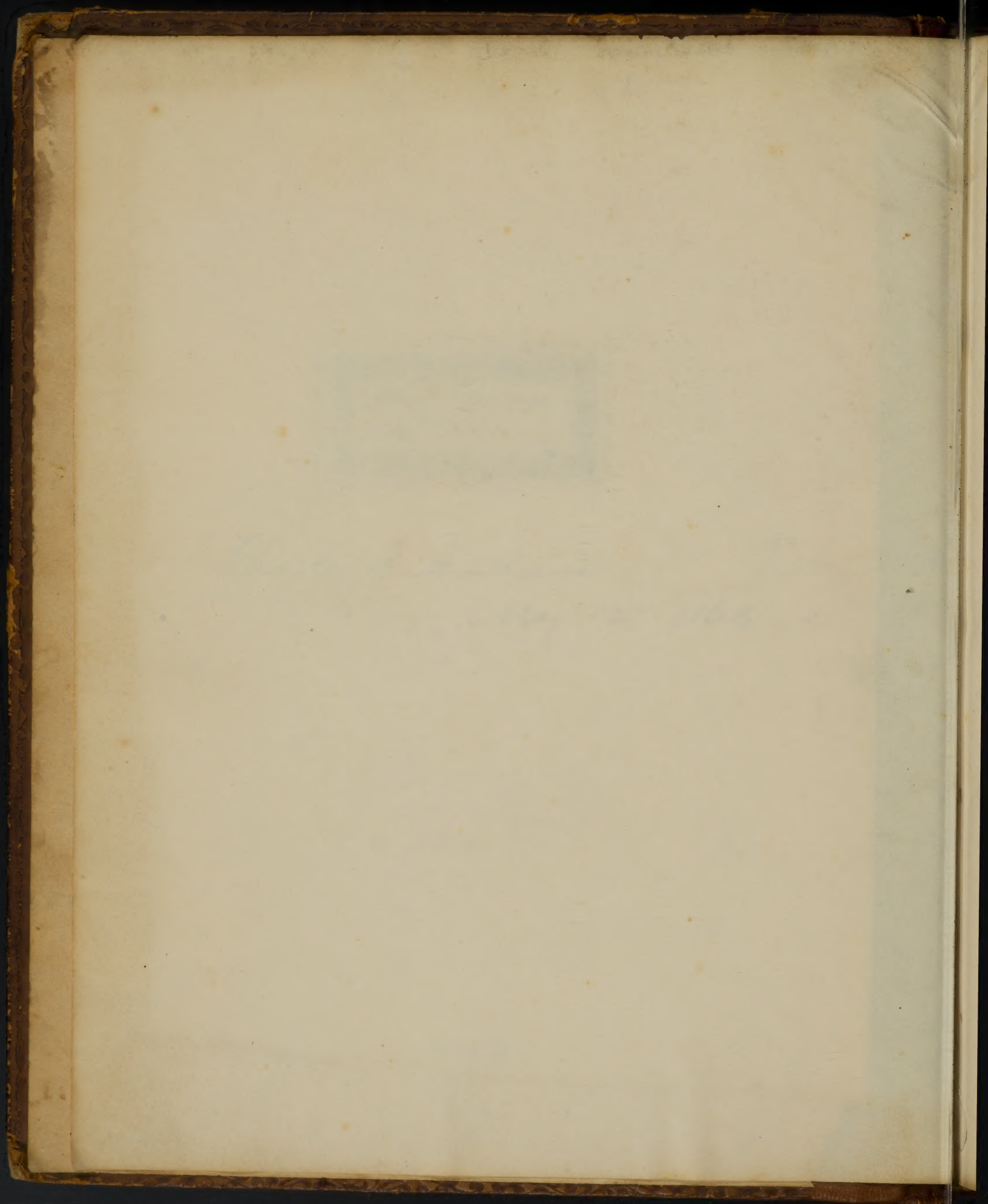
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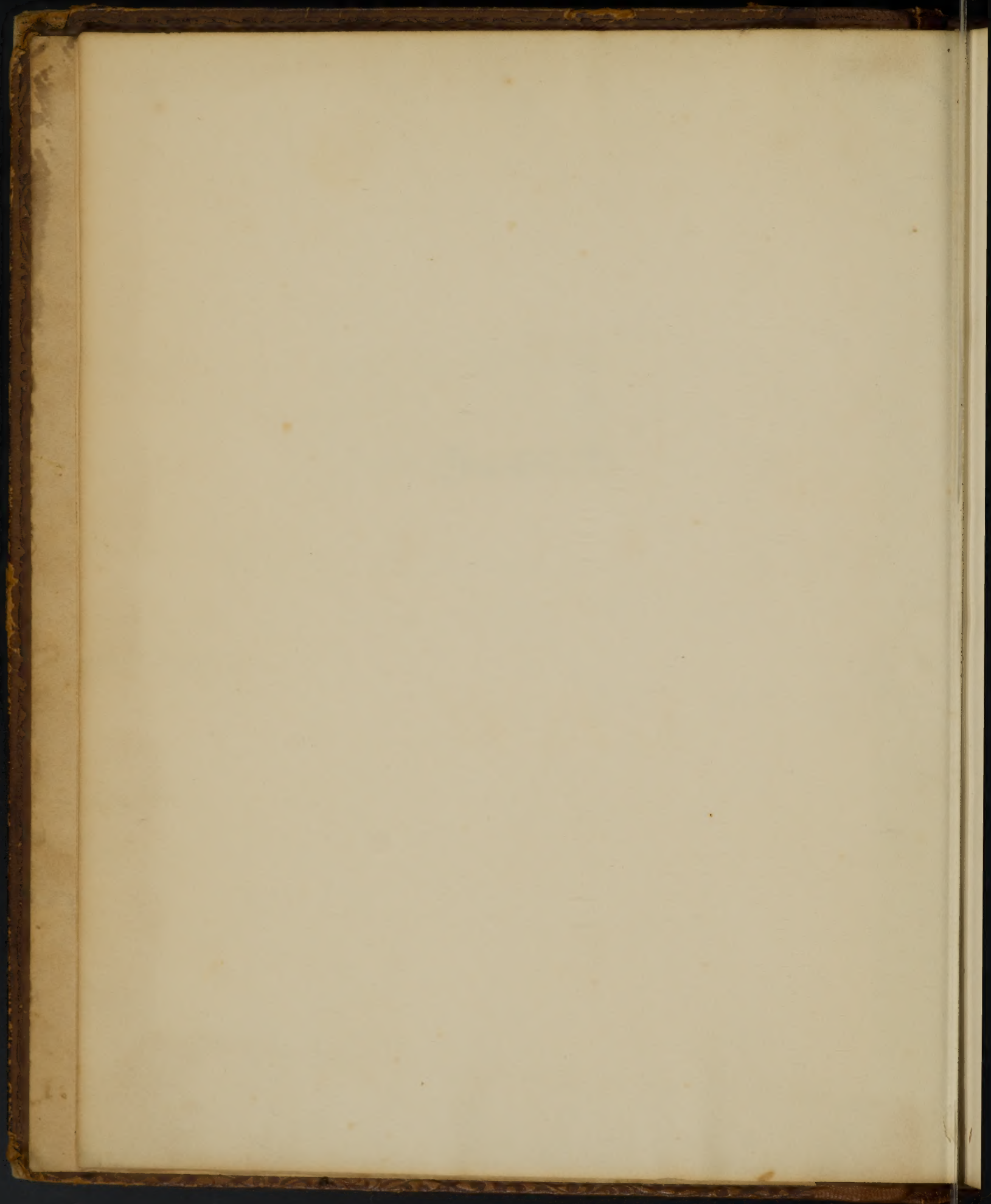
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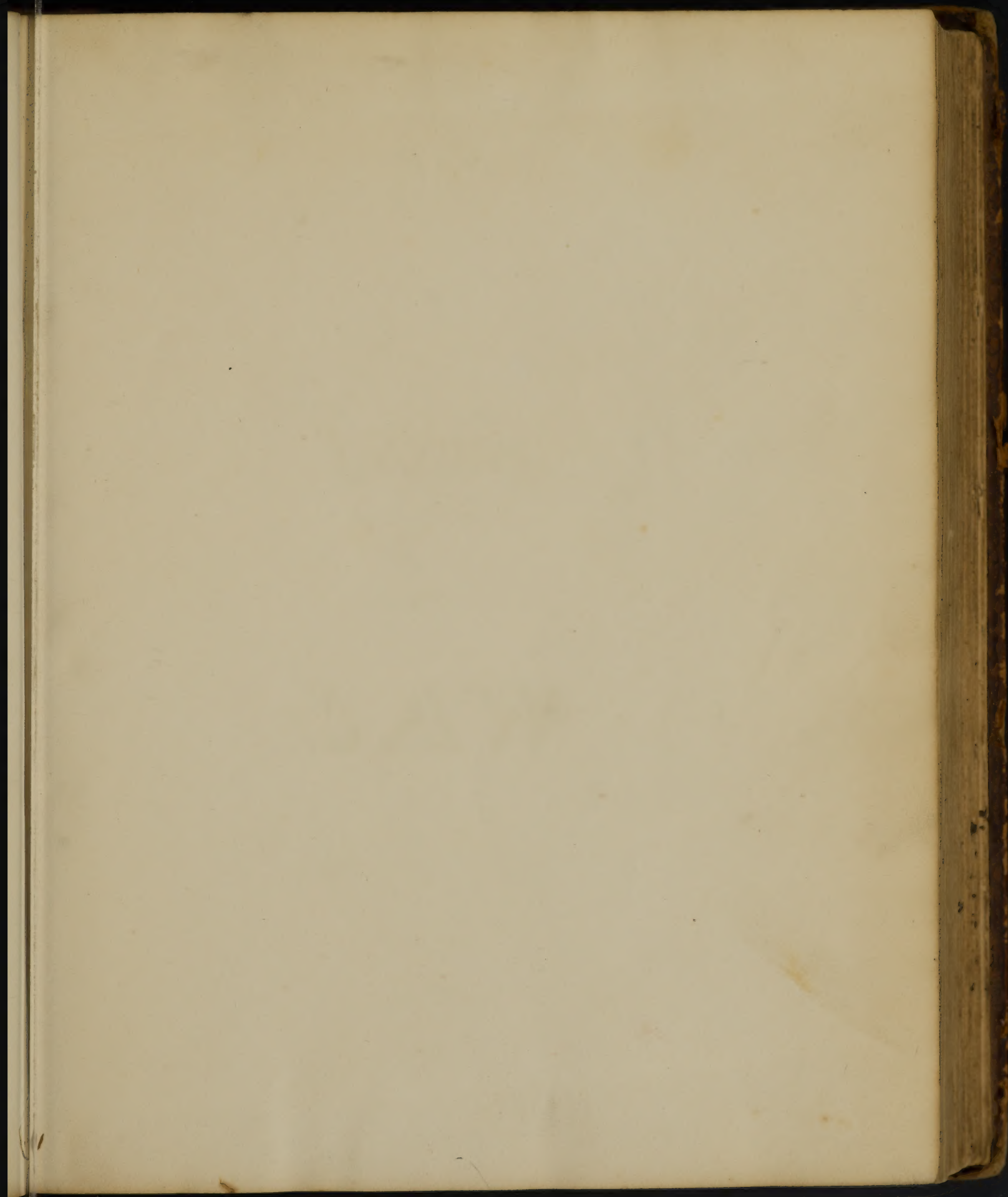
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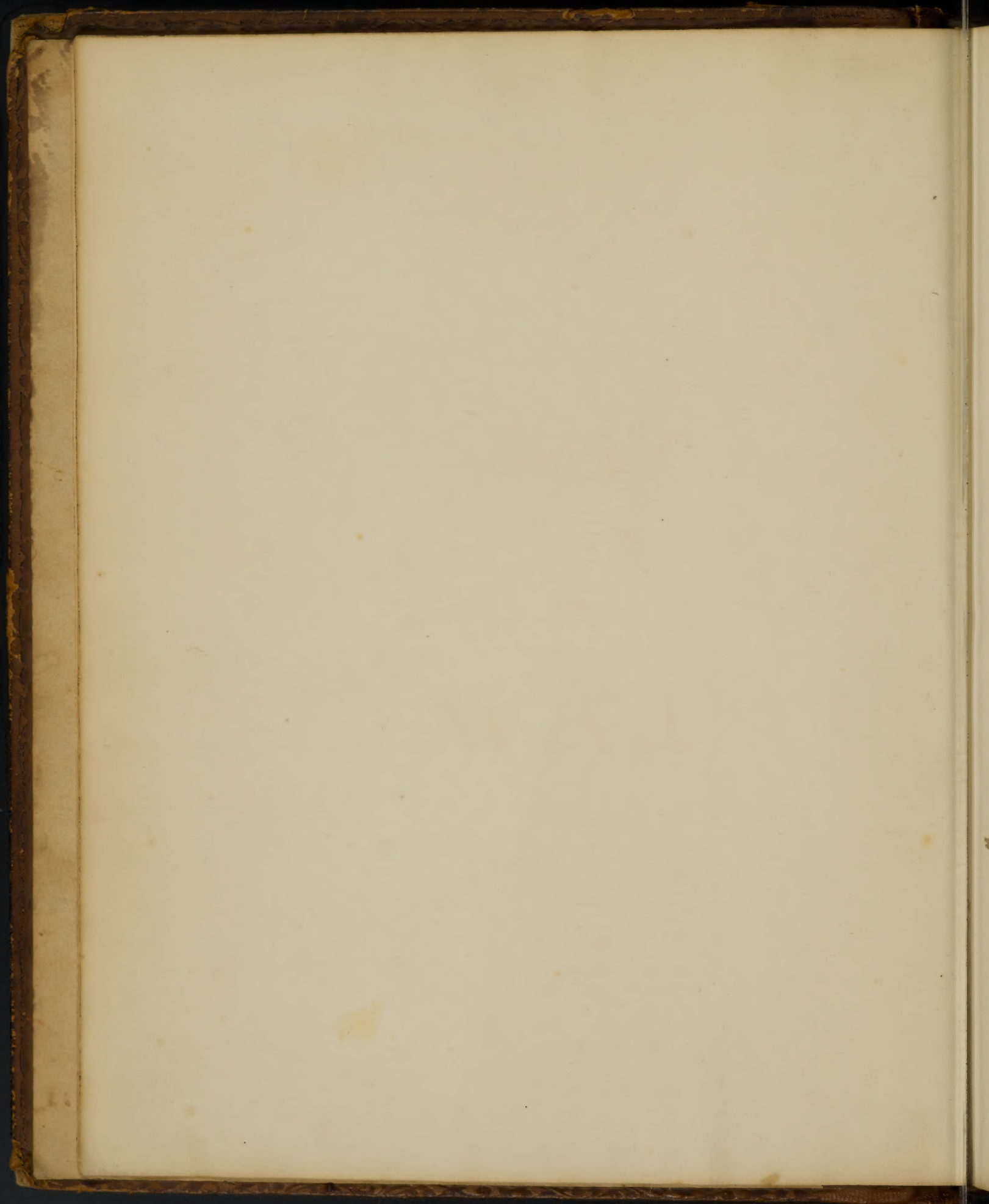


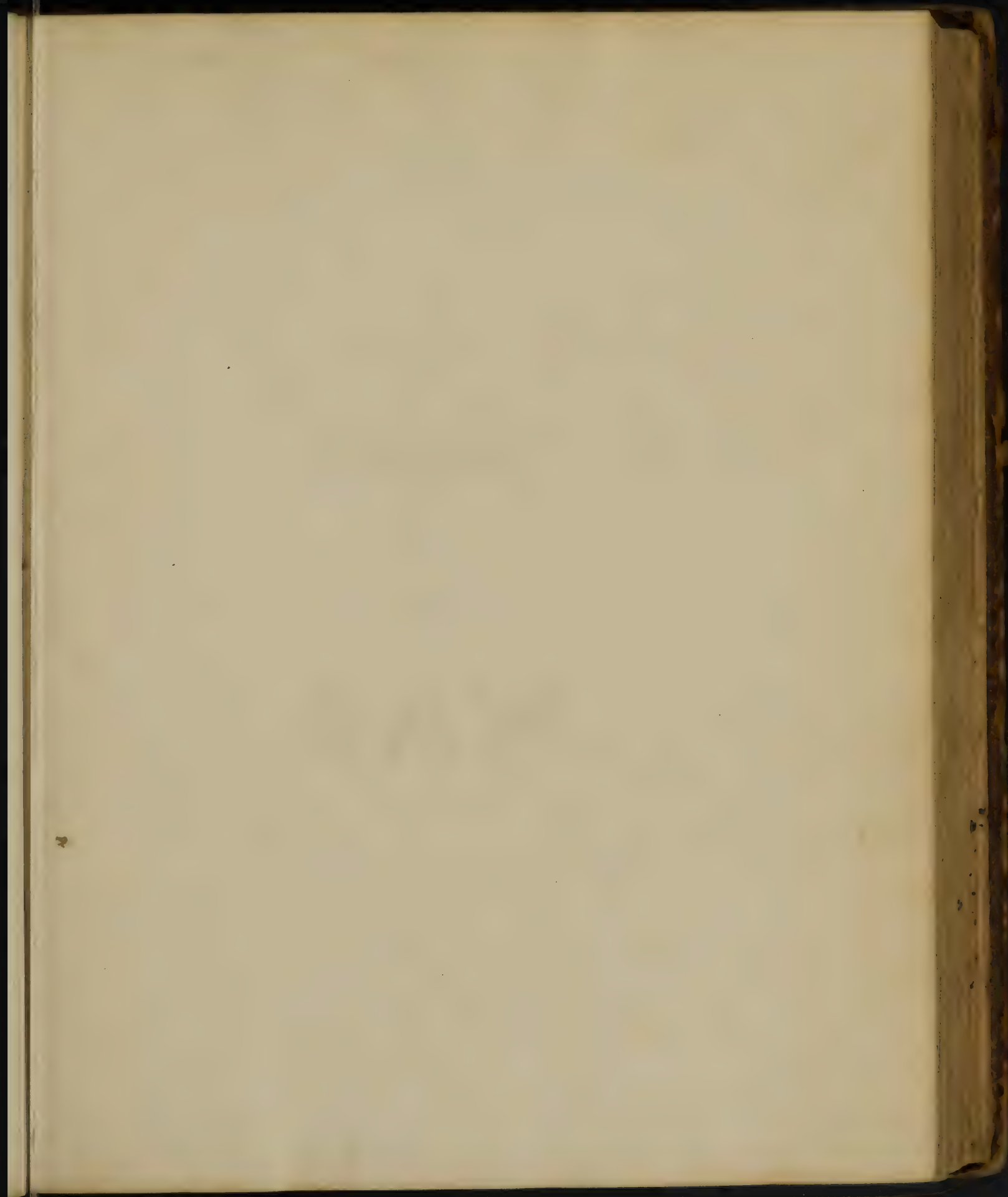


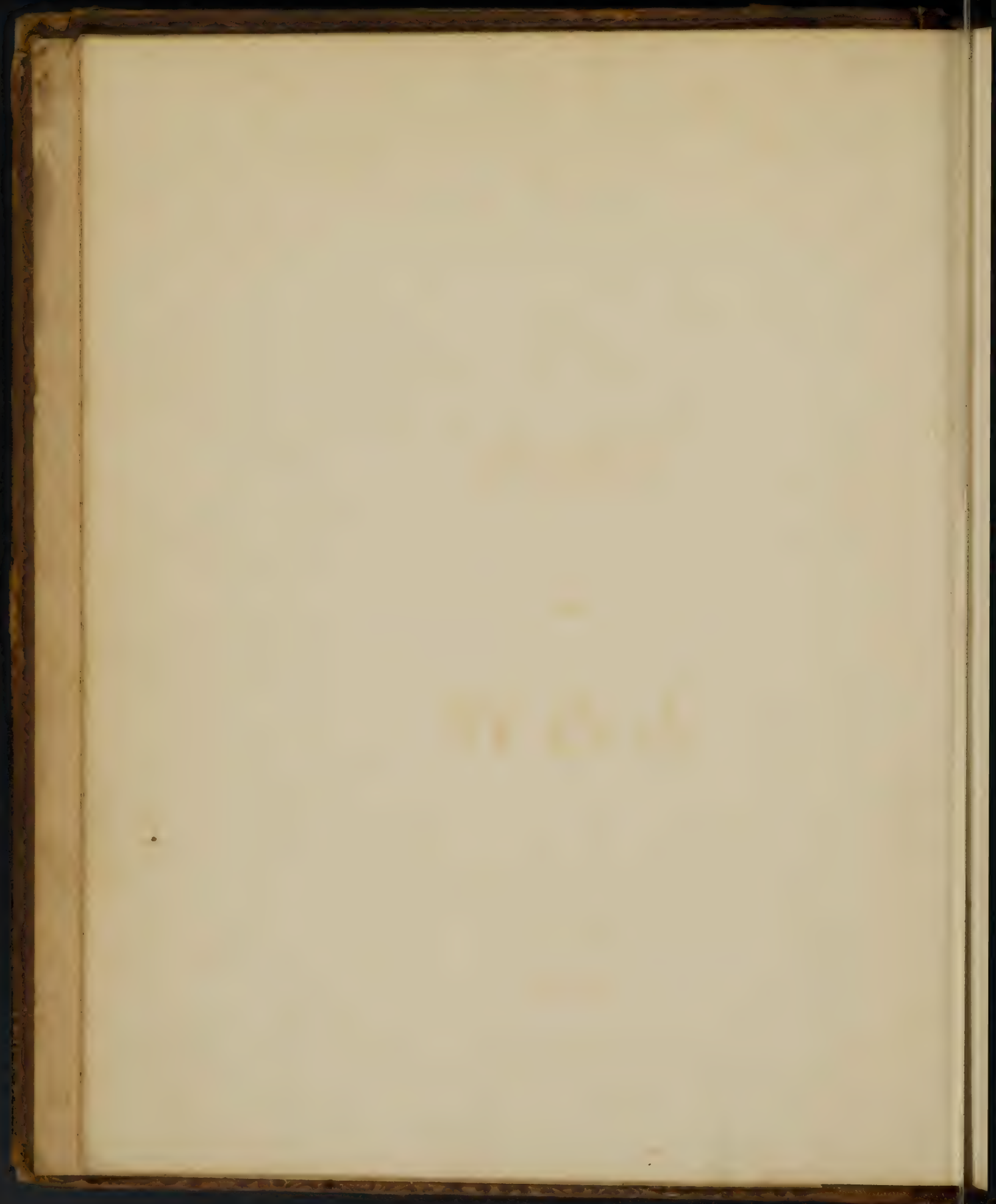
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NOTES

of
Lectures

ON

LAW

By the
Hon. James P. Riddle

VOL. III.



1824

1815

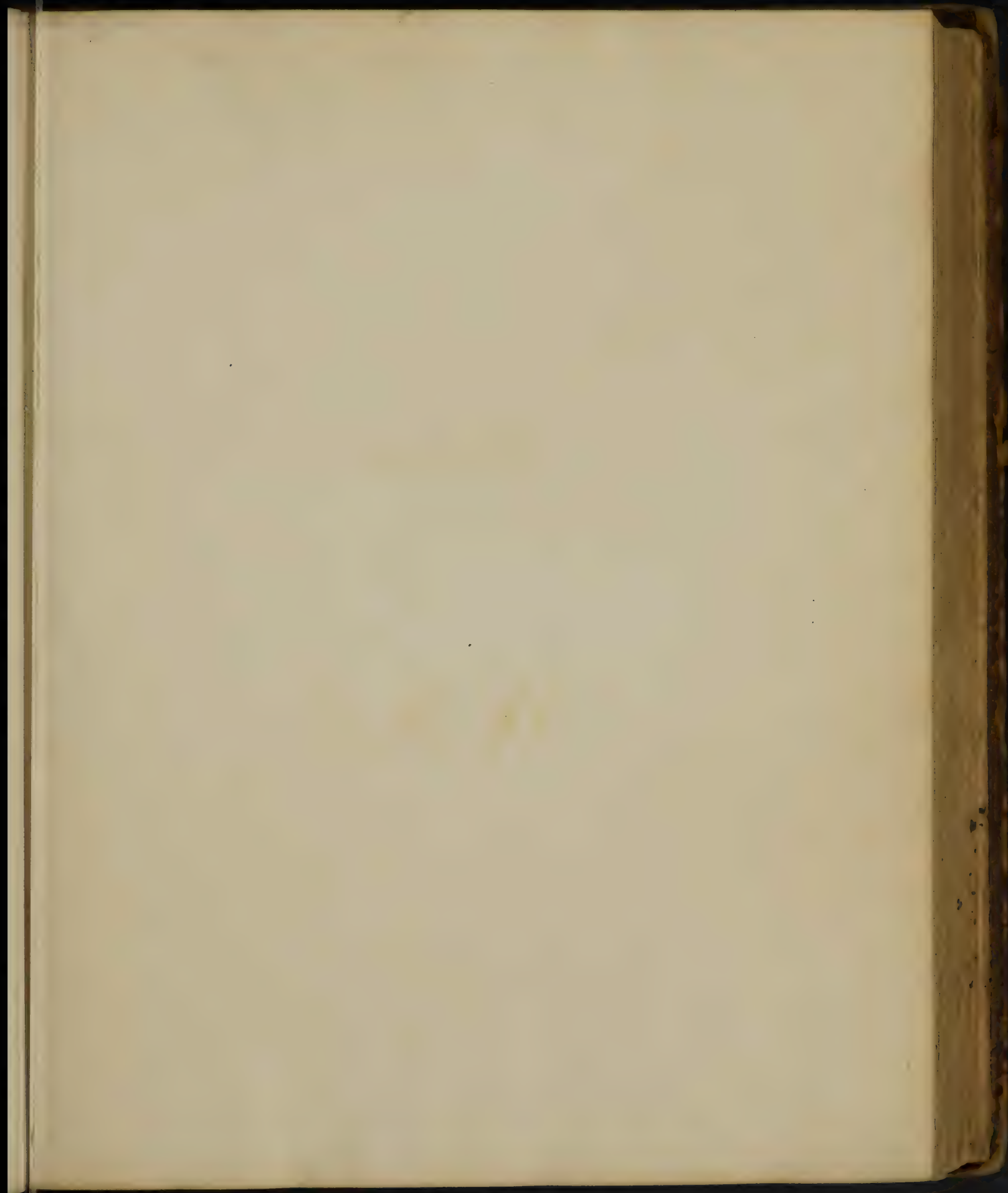
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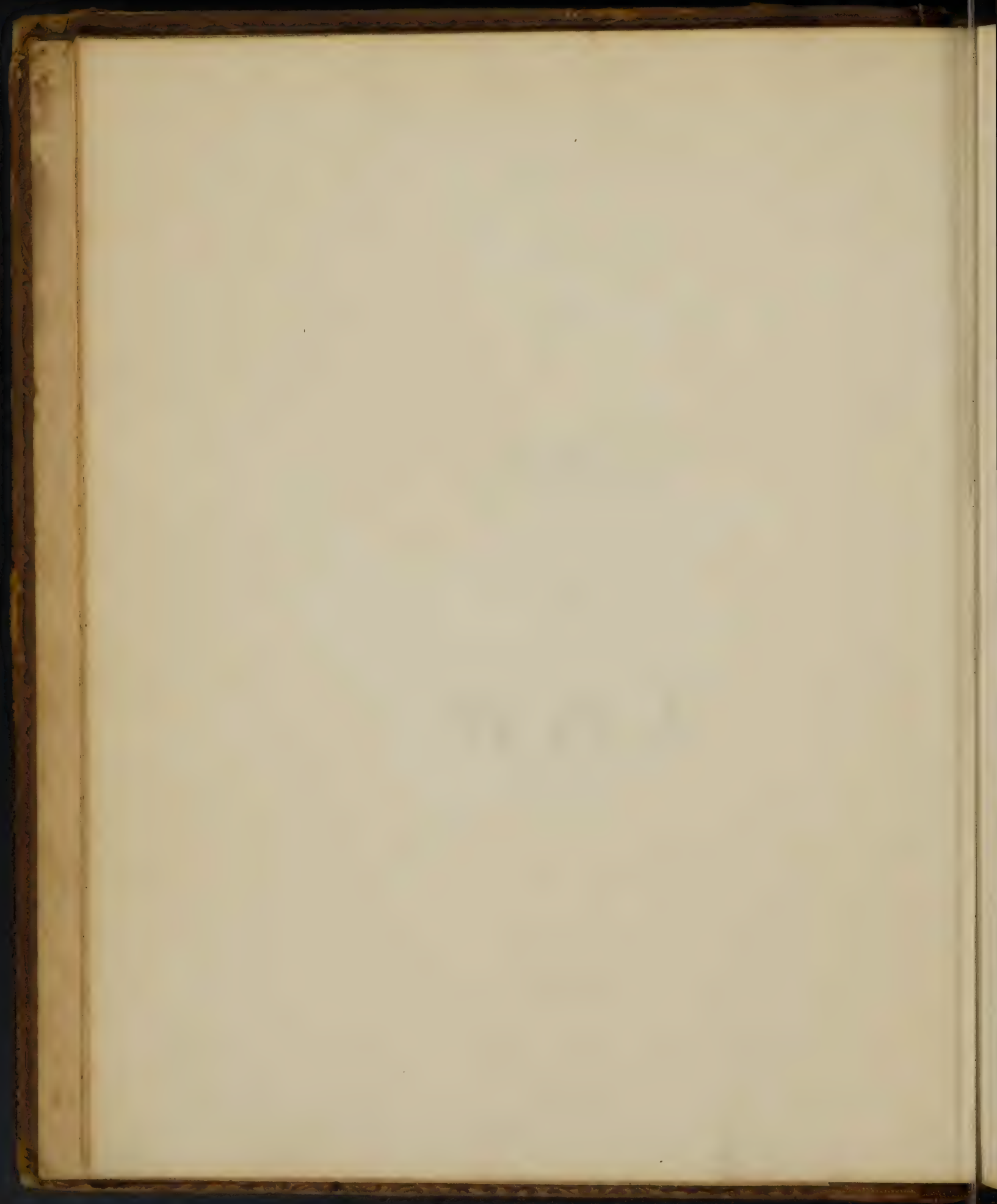
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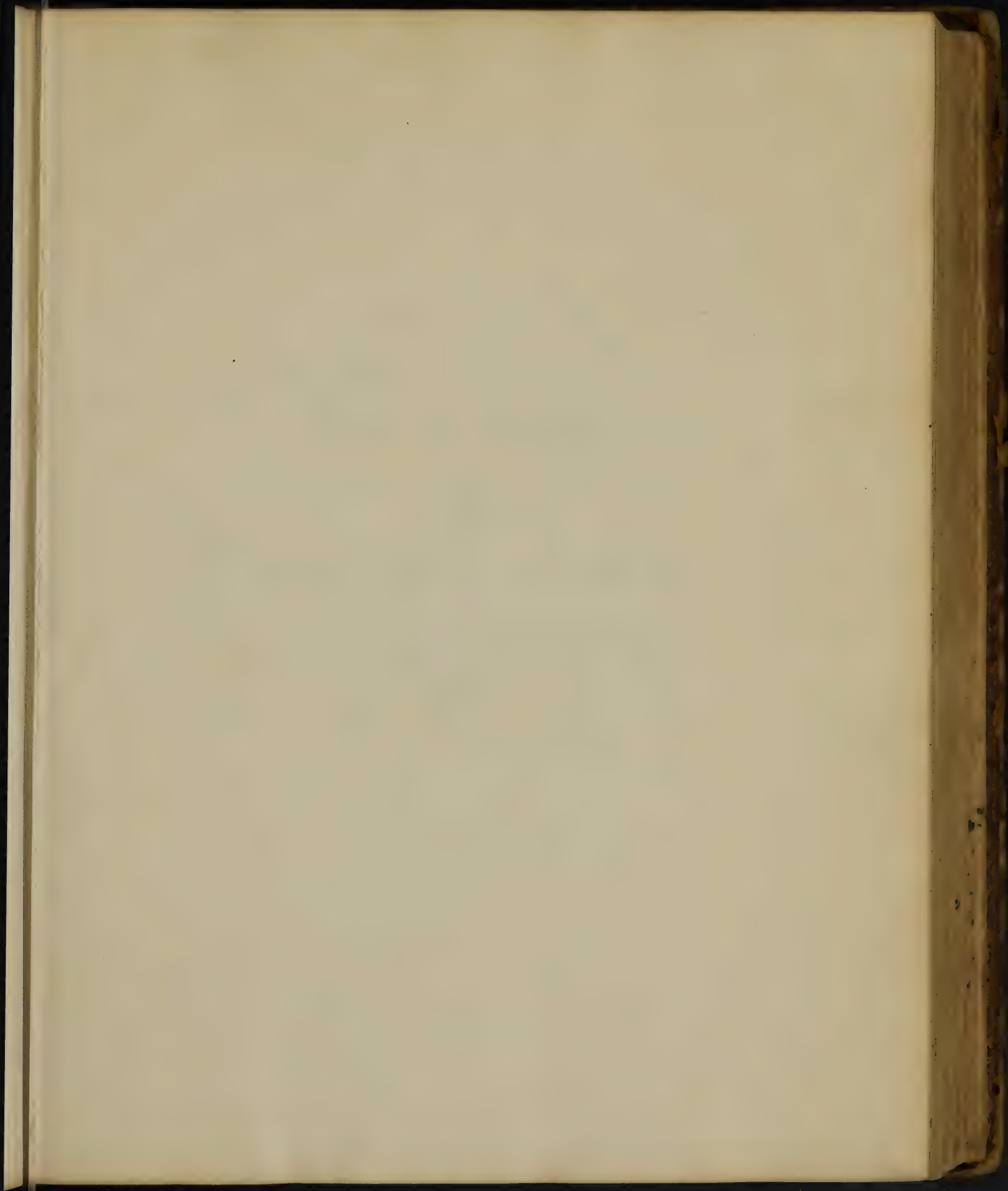
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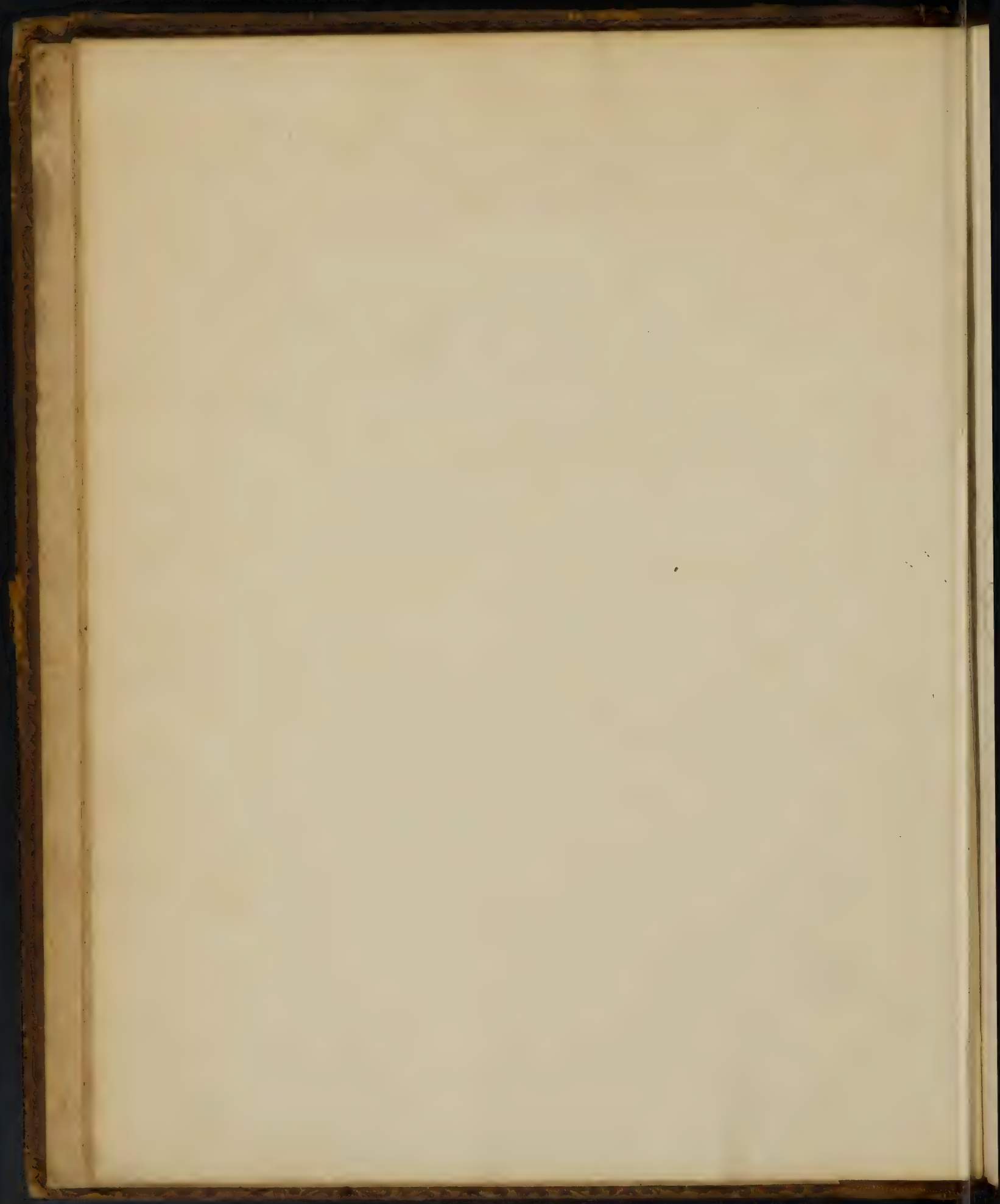


1815









Bills of Exchange
And
Promissory Notes.

1844
The
1st
of
the
year
1844

Bills of Exchange and Promissory Notes

1. A Bill of Exchange is an order, direction, or request given by one person in favour of another to a third person, directing him to pay a sum of money, certain, in his account, to the person who writes the request is called the drawer, to whom it is directed the payee, and to whom it is made payable the payee. C. 11. 298

2. Almost all the cases I say some will be of Bills of Exchange. This is one of those cases which constitute the "Law Merchant", and all bills of Law Merchant have been denominated "Law Custom" but this is incorrect. 1 Wbl. 175 or 75

The Law Merchant is of a higher nature than that of special custom. A particular custom must be pleaded, but the Law Merchant need never be - a particular custom is proved by witnesses - but in few instances is it necessary in cases of Law Merchant to prove it by witnesses. This is a branch of the Common Law. Mason, Insurance, 18. 19. 20. 125 2 Bar. 1218. 1 Wbl. 298. 4 2 B. 218. 3 B. 1609, 2 B. 231. 169.

3. The Law Merchant was formerly confined in its application to Merchants themselves, except in the instance of Foreign Bills of Exchange. It is however now long since to be the case. It is not now confined to any particular class of men, but the Law Merchant governs particular transactions among all classes of men. 3 Wbl. 346. 2 B. 13. 14. 18. 19. 2 Wbl. 459. 461. 7. 2d May 1761.

Bills of Exchange.

- 1st A Bill of Exchange is an open letter of request addressed by one person to another desiring the latter to pay a sum of money to the third person or some person appointed by the third person or to the bearer. *Ch. B. 3. & B. 460.*
- 2nd These bills were first invented to facilitate exchange of currencies but now are used in every negotiation - A Bill of Exchange is an assignment to the payee of a debt due from the drawer to the drawee. Suppose A of N.Y. owes £100 to B. in London. B owes the same amount to C. in America and draws a bill on or payable to C of the same amount so that this facilitates payment. *17 L.J. 462, Ch. B. 13.*
- 3rd A Bill of Exchange may be drawn payable to "a order" or to the order of A" or to "A Bearer" or to the Bearer generally, without naming any individual *3 B. 151, 7, 152, Ch. 47, § 8, 2 B. 467.*
- 4th If the drawee agrees to accept the Bill, he is then called the acceptor. If the payee directs the Bill to be paid to a third person that third person is called the endorsee. The person in possession of the Bill is called a holder. *Ch. B. 4. Ch. B. 22-3, 2 B. 465.*
- 5th But a Bill of Exchange differs from a common check or order by being negotiable. Every Bill is negotiable for every holder in whatever form it appears if it is not, it is not a Bill of Exchange. If a note is drawn payable to B. for £100, without naming an order or bearer it is a negotiable Bill.
- 6th One of the legal effects of a Bill is that in which the legal and equitable interest may be assigned to a third person not originally a party to it. It is an instrument of transference that the debt may be assigned to a third person so that he may sue upon it in his own name even if he is not a party to it. It is an instrument of transference that the debt may be assigned to a third person so that he may sue upon it in his own name even if he is not a party to it. It is an instrument of transference that the debt may be assigned to a third person so that he may sue upon it in his own name even if he is not a party to it. *Ch. B. 1, 14 L.J. 462, 7 & B. 243, 4 & B. 342, Ch. B. 467, 107.*

Bills of Exchange.

The rule has been altered in the State of Mass. to a cert-
ain degree. The British Courts of Exch. have likewise
rule in a somewhat different manner. In an action
upon a bill of exchange when there has been given to the
debtor of such agent. the debtor is allowed the privilege
of pleading a release from the assignor of the debt. 11 Mod. 44.

I think this rule of the Eng. Courts will not be re-
tained. as in my conception it is an incorrect usage
to plead to such parties. I think the State of N. York has
adopted the Eng. course. It enables a party to plead a
release of pleading.

3 Courts of Ex. have however always protected the assign-
or of a bill in an action, provided the assignor was paid and he
received consideration. 4 Exch. 109. rule always given
in cases of assignor when notice has been given. 2 Bk 442
Ch. B. 4. 2 Ex 425. 540-95-692. 3 P. 11th 19. 1 De. 411-12.

That the ^{rule} of Com. Law, according to is that a bill in an action
it be assigned. Yet at the present day a bill in an action may be
assigned to a third party between the assignor and assignee in
the assignor is liable to the assignee, unless he has
received. The words "I sell" or "I transfer" that last to
simply a contract between the assignor and assignee and
if the assignor receives the debt, he is liable to the assignee.

Ch. 5. 109. 1 P. 10. 11. 133. 2 Bk 442

4 It is a rule of Com. Law, at this day that an assignor of a bill in an
action is a sufficient consideration to support a promise by the
assignor to pay the value of it. The assignor is a mere seller
of the bill. 1 Hall 29. 1 Sid 212. 2 Bk 442. 4 Lk 341.

5. If the assignor is under seal and the assignee of the bill,
receives the money & releases the debt, he is liable in an
action of debt broken. but if the assignor is not under seal

holder and the assignee receives the money and releases the debt. It is held in order of assignment to the assignee.

6. The assignment of a check in N. C. need not be by deed 4 N. C. 690. A check may be assigned by deed if action is made by delivery 4 N. C. 690. See King 688. 1242. 3 Feb. 364.

7. In this state where the assignee assigns the Bond and afterwards releases it, the assignee may maintain a new action on the case for fraud. Our rule gives the assignee after the release the same privilege as the assignor or is given by Chy. in Eng. In this state the remedy of the assignee is at his election either in the assignor or the obligor in the Bond for fraud in an action on the case.

8. The equitable nature of an assignee in Chancery in action has been many times recognized in Chy. of Eng. When the assignor of a Bond has become a bankrupt afterwards, a suit may be maintained in the name of the Bankrupt for the receipt of the assignee. Now the bankrupt can maintain no action in his own right. In this position the equitable right of the assignee of the assignor is recognized in Chy. of Eng. 1 N. C. 519. Ch. 5.

According to recent decisions in some of these States, especially in N. York, Chancery in action are at this day virtually negotiable except that the assignee must sue in the name of the assignor.

Under what circumstances may a consideration be null

Generally in actions on simple contracts the Def. must prove a consideration. But where an action is brought upon a specialty no consideration need be averred. 2 N. C. 331. Ch. R. 9. 11th. 330.

2. That the Bill of Ex. is a simple contract it is unnecessary for the Def. to prove that he gave any consideration for it. The Bill of Ex. prima facie evidence of a consideration. See 40. 2 N. C. 445. 2 L. R. 75. 1 N. C. 497. Ch. R. 9. 51. 116. 118.

Bills of Exchange.

In this respect the instrument which imports a consideration with a specialty, the reason of this is, that the rule is established to prevent frauds when there is an original party, and of the force of the rule under more with this respect "that to the effect received in consideration" then evidence in case of the first payment of the bill is also, & that in facilitating modes of payment, it would be a good top.

3. If there is a written promise in more writing it imports no consideration, and it is so, if the words "value recd" are in the instrument. If a man agrees there is a writing and sealed "I promise to pay A. B. \$100. within 60 days, value recd." then the words "value recd" make it not negotiable. 2. Chas. 257. 3. Lev. 286. 4. 1st. 151.

4. If at the face of a Bill, it appears by delivery, to be made to B. find the Bill. B. must show a consideration for it. B. transfers it to C. for a valuable consideration, C. may receive it at any rate. 3. B. 156-23. Ch. 2. 39. 31. 201. 9. Gough, Pick. 220.

5. The defendant is now in full permission to prove that he received no consideration for the Bill, except where the action is brought by some other person, with whom he is immediately concerned, the negotiation of it, thus if the receiver brings an action to the drawer the drawer cannot prove that he received no consideration, and so of the holder.

The act is allowed to prove with the party concerned, with him in the negotiation of it, and if the drawer was allowed to prove no consideration to the action by the indorser, the indorser would be shut out by fraud prevented by the prior parties. 1. 1st. 156. 445. Ch. 95. 1. 1st. 674. 2. 1st. 71. 1. 1st. 117 to 119. 1st. 276-7.

6. It has been doubted of late by some whether the parties or

Of the different kinds of Bills of Exchange.

1. Bills of Exchange are of two kinds Foreign & Inland.
A Foreign Bill of Exchange, is one drawn in one state or country and is payable in another. An inland Bill of Exchange, is one drawn in one state and payable in the same state. I have always seen a Bill in this state, payable in one state and drawn in another is a Foreign Bill. *Richd. 10. Ch. 12. 14. 3 Edw. 1. 36.*
2. Bankers Checks are in form like Bills of Exchange. In Eng. they are always made payable to "bearer" this is not the case universally here, the general rule is *4. 4th. 423. Ch. 16. 17. 18. 109.*

If then this check or draft is dishonored, the holder remedies it the same as in Bills of Exchange. *3 Bro. 1517. 17. 7 5th. 423. Ch. 16. 17.*

In common mercantile concerns these checks are treated as cash, yet in their legal nature are executives. *Id. Roy 744. Doug 635. 7th. 423.*

These checks or drafts are always, in Eng. payable on demand if they are payable on demand, the holder must present them within a reasonable time, if he does not & the Bank fails he must bear the loss. *Richd. 1. 42. 11th. 1. 1 Id. Roy 744.* In great many instances will occur which you will find the word "reasonable time" used. What is a reasonable time, in a given case, is a question of fact, and a question of more fact, but as different judges would adopt different rules, and thus the law would fluctuate, It has been said it is now the rule to consider it as a question of Law. The point the jury find but as to "what is a reasonable time" is a question of Law. *11th. 1. 11th. 1. 1 9th. 415, 550, 2d. 210 1248. 1175 Beanes, Sen. Worcester's 182, Richd. 41.*

Of the parties to Bills of Exchange,

1st It has been long settled before this day that all persons in general having understanding and legal capacities to contract may be parties 2 Ven 272, Coth 282 Polk 125, 126 and 36. 380. Ch. 119.

1st If Corporation a body politic may be a party to a Bill of Ex. yet it must be by some agent appointed by the vote of the corporation 1 Attk. Bl. 2 Bar 1216.

2nd Persons incapable to contract as Idiot, Lunatics, and Infants &c. cannot contract Coth 160. 161 & 162.

But if a Bill is drawn, accepted or indorsed by a person capable of binding himself, the instrument will still be good as to all others who are parties to it and who are capable of binding themselves. Thus if A. a feme covert draws a Bill on B. the feme covert is not liable but if B. indorses the Bill to C. B. is liable to C. An endorsement in law is a distinct contract 2 Attk. 11-2 Ch 21.

If A. indorses a Bill to B. an infant & the infant indorses the Bill to C. this is good as between A. & C.

11th The original parties are three generally, for in the course of negotiation the number of parties may be multiplied, the original parties are three the drawer, drawee, and payee.

Mr. N. says the original parties are four that I cannot understand And 2-2. Ch 22.

Bills of Exchange.

1st That it is not indispensable that there should be three actual persons or parties in the first instance. As if A draws a bill on B payable to himself or his order if then he endorses it to C. it is a complete Bill of Ex. 1. Folio. 130. C. 29. Ch. 22. 48. H. 4th c.

2nd Indeed there may be a valid Bill of Exchange with only one person actually a party. But this is necessary that A may name a bill payable to himself or his order and by endorsing this he gives the holder a complete title as he may have on any other Bill of Exchange. Cuth 500. 3. Rec 107. Ch. 22.

3rd When a person is not actually party to a bill may become so by the negotiation of it. If A draws a Bill payable to B or order & B endorses it to C. & endorses it to D. here D. becomes a party and if D endorses it to E. E becomes a party.

There is still another mode of becoming a party which is called

Party by acceptance

4th A stranger may make himself a party to a Bill by accepting it for the honor of the drawer, or endorser. Thus if the drawer comes to accept it, any person whatever may afterwards accept for the honor of the drawer which is called an "acceptance for the honor" and remains if the drawer accepts the bill and afterwards becomes sick & is not able to pay it any person may accept & pass the bill for the honor of the drawer. Cuth 129. Rec 456. H. 4th 156. 153 to 56. Ch. 23. H. 4th 180.

2. It seems however that this practice (as well as the acceptance for the honor of the drawer) obtains only in cases of Foreign Bills 1 Esp 112, Ch 115, 163-4.

3. A Person may become a party not only by his own individual person but by the act of his agent, properly authorized it is said this may be done by an agent or partner of a firm, but the partner is an agent, being of the firm. In every case then the party is said to become one by procuration, so that if it draws a Bill by the hand of B. it is drawn by procuration 1 Co 75, 2d Ray 434, 6 Mod 36, 12 id 546, 564, Ch 23-4.

And as the act of the agent is only ministerial, Persons capable of contracting for themselves may exercise the office of an agent, as General Agents, Factors, Outlets &c all which may either accept, indorse a draw, a Bill of Ex. as agent, 2d Ray 52. a, Ch 24.

4. An Agent for this purpose may be constituted without deed, i.e. without Power of Atty. It may be done by deed & writing, without deed, or by parol.

A Parol agency, can always be created for the purpose of creating a parol contract, 12 Mod 564, Ch 24.

A Person signing his name on a Blank paper and delivering it to another, that he may fill it up, with a Bill or note of any amt. or that he may use it as an endorsement on the opposite side. This is good for such a Blank is an indefinite letter of credit. But on Stamp Paper the receiver is limited to the stamp, in filling it up, 1 Hen 313, Long 496, 514, Ch 25, 56.

But in drawing the acceptance or endorsing for the principal the Agent must take care that he does it in the name of the principal, otherwise the Agent would be liable. The proper name of power is this, "A. B. by C. D. his Atty. a Agent."

Bills of Exchange.

There is no prescribed form which is indispensable any signature which would show that he acted as agent would be sufficient. 2 Cr 15, 1 Stea 105, 5 Tr 16, 176, 1 ib 181, 1 Stea 955, Com Dig Altz. C 14, Ch 27, 56, 15.

5. So also one of two joint parties may accept the bill in the name of both, binding the firm, provided the bill comes to the joint hands, in this case the one of the firm acts as agent. 1 Ta 16, 125, 292, 7 Tr 16, 207, 1 Rep 16, 16, 1 Com 403, 1 La Ray 175, 1484, if a Bill drawn on a firm is accepted by one of the partners not only in the name of the firm, but in his sole name - a the name of his partner solely, it binds the firm, as it is held 1 Com 384.

There is certainly some uncertainty in this rule, for it is agreed that if one of two partners draws a B of Ex. in his own sole name, or in the sole name of his partner both are not bound, 15 East 1112 2 Com 308.

But if they draw in both names, the question is ^{in what} manner the difference is made. It is said by Lord Mansfield ^{in Ellenborough} that when the act ^{is there} of accepting the Bill the acceptance is to be construed to take effect according to the form and intention of the Bill itself, it is an acceptance according to the tenor, being drawn on both, & the agent of one in such case is the agent of both. But if the Bill is drawn by one of two partners it binds not the firm.

6. It is settled that if two persons who are not partners, make a bill payable to a third person, they become joint partners of said sum, 1 Doug 653, 1 Vent 16, 1 Watson Law on Partnership 253 and onwards, Ch 27.

In such a case before Lord Mansfield he admitted the testimony of Reputable Merchants to show that the instrument by one of them did not transfer the Bill.

A & B are being partners drew a bill of Ex. payable to their own order. Afterwards B. endorses alone, here the endorsement was only in the name of one, and did not bind both but had it been in the name of both they would have been liable. 1 Ch 29, Watson. 253 to 257.

Forms & Requisites of Bills of Exchange.

1. There is no particular form of set of words in the creation of a Bill of Ex. Now in some com. L. instruments there are certain set forms, but in B of E when the intention of the drawee is manifest it is sufficient. —

1. When it made a writing in this form. I promise to account with B a his order. This was held to be a good promissory note. Kea 61. Tra 624. Com Dig. Obligation Br 1. 2. Ch 31. 58. 3 Nels 213.

2. Tho the Law prescribe no certain phraseology, it must possess certain qualities, unless it contains them qualities. It is not what the Law deems an instrument but the evidence of a parol contract. 12 Mod 1545. 2 East 359. 360. Ch. 32. 173. 184. 180. 192.

I will here remark that. by an Instrument, is meant, ^{that which is used as,} (an obligation) creating an instant. right or obligation.

3. Now then are certain requisites to Bills of Exchange, without these requisites a writing will not carry an entire evidence of a contract nor is it negotiable. 3 P.D. 213. 214 R. 1072. 5 Y.R. 485. 7 id 241. 1 Hen Blk. 239. 242.

These requisites are two, 1st

1st That the instrument be payable at all event, and not upon any contingency whatever.

2^d That the writing a Bill be for money only and not

32. In the case of bills of exchange, either in part & in whole, and the whole must be payable in money. 3 Mils. 213.2 Bk R 1072. 5 Y.R. 485. 7 id. 241. 1 Hen Bk. 239. Ch. 32. Kid 56th covered.

1st Then a bill drawn upon another for the payment of money only, if it were payable on any contingency, that contingency would perplex commercial transactions on the uncertainty of its being paid. It would be a source of fraud and imposture.

If then a writing a note is drawn payable on an event that may never happen, there can be no bill of exchange. 5 Y.R. 485. 3 Mils 213. 1 Bm 325. Hen 115th. Kid. 56.

Hence if a bill is drawn payable out of a particular fund, which may not prove productive is not negotiable. I thought the fund may prove productive yet this cannot make it a B of Ex. A bill of Ex. can never become good upon any uncertain event, existing at the time of drawing the bill. La Ray 1362.-68. 1563. Hen. 115th. 5 Y.R. 482. 1 Bk R. 782. 4 Y.R. 343. Ch. 33. Kid 57.2.

Hence it is also a rule that the bill must import a personal credit to the drawer and not be dependent upon any particular fund. 3 Mils 213.

According to some opinions such an instrument may be declared void by the original parties on this point the authorities do not agree. That they may so declare seems to be the more prevalent opinion, in support of the declaration. 7 Y.R. 485. 6 id. 123. Kid 65. Contra 3 Mils 211. 2 Bk R. 1072. Kid 58. 65.

2. The rule requiring certainty in the event is—

1. That when the event is of notoriety, merely certain in respect.

Bills of Exchange.

33

Tradition may be changed when a party acts out of a particular fund.
It has been determined that a Bill directing the payment of ascertain sum, 2 months after the ship is paid off, was a negotiable bill, the paying off a ship being ^{morally} certain.
See 24. 1 Mils 262. Bus v P. 272. Kid 57.

2^d Again when by the terms of the instrument the money is payable on some event which must inevitably happen at some future time, the Bill so far as it respects certainty is good, as a Bill payable when it shall attain the age of 21 & specifying the day when it comes of age, for by specifying the day, it binds the party to the payment on that day if it dies before ~~the day~~ ^{the day} 21. See 1217. 1 Ben 226. Ch 33-4. Kid 57. he arrives of age. —

But there is a distinction between drawing a bill on the credit of some particular fund, and the mere mention of a particular fund simply by way of directing the party how to reimburse himself. See 762. Le Ray, 481. Burn v Dine 12. Doug 571 Kid 54. Le Ray 1545. 7 Y.R. 733.

For an Example to the above rule vide Notes at the Close of the acting R.
The 2^d requisite is that the B be drawn payable in money only. A B payable in goods is not good B. of Exchange.

1. These intimations are adopted for the purpose facilitating money remittances and not as a medium of Barter.
If B^s payable in goods were allowed to be Neg^s it would ~~only~~ seem only to perplex Trade and confound dealings.
See 1271. Kid 50. Ch 35.

2. It was determined in the Supreme Court of this State,

that a Bill drawn in this State payable to order, at the City of N.Y. in current Bank Bills of N.Y. was negotiable, I am by no means satisfied that this is not right. Bank Bills in N.Y. are treated as Cash, in almost every situation,

Bills of Exchange

3. It is not to be inferred that when these instruments contain not their essentials that it is of no evidence whatever. Tho. it may not be negotiable, yet it is evidence of a valid Contract and will support an action, 2 Blk R 1072, Kid 58. 65.

4. It is a rule that the insertion in a Bill of any thing nearly extraneous or foreign to the Contract does not vitiate it if it comes within the maxim "ut illi per imitatio non videtur," Kid 61, Stea 906. Cf. Lett.

5. In the case of joint Bills, it is necessary to make three Bills of the same tenor, so that if one or two should be lost the other might be accepted. Now in order to prevent payment on the whole, each Bill should refer to the other two and make payable only on the terms a consideration that the other is not paid.

The usual form is — — — "Pay to this my joint B of Ex, the second and third not paid."

Cf. Fictitious persons as payees. — Ch 46.

6. There have been instances of Bills drawn payable to fictitious persons; these questions have created much discussion in Master Hall than any other class of Bills of Ex. If a Bill of Ex. be drawn in favor of a fictitious payee and that circumstance be known to the acceptor as well as drawer, and the name of such payee be inserted in the bill, an innocent endorser for a valuable consideration may become liable to the acceptor, as one B. pay to C. and the B. payable to a fictitious person a order and endorsed in his name is a legal effect payable to "Bene" as between those parties who are privy to the facts. But between those who are ignorant of the facts, the rule is different, 1 Hen Blk. 313. 386, 569 & 9 R 174, 182, 481, 2 Hen Blk. 194, 288. Ch 47. to 61, 109, 202, Kid 208, 219, 227.

A Bill made payable to one person for the use of another is a valid Bill. But the action at Law must.

be best by the prior party. *Carte 5.* 2 Vent 307. 6 YB 123 35
 1 Hen Blk 313, Ch 48. 112. Kid 108.

Another cardinal characteristic of a Bill of Ex. is that the B contains words operative of a transfer. But I would say that "words of negotiability" would be more proper. It may be to "A. or order" which is precisely the same. or it may be to "A. or Bearer." To an order to J.P. a his agent would have the same effect Ch 189. 15. 134. 108. *Carte*, 403 2 Mils 353. 312 211. 2 Stra 1212.

It has been questioned how far the word Value Rec^d are necessary but it is now settled, that these words are not necessary, for a B of Ex prima facie ^{in the absence of} a consideration even between the original parties. tho the drawer may disprove the consideration La Ray 1481. 8 Meow 267. 1 id 312. 3 Mils 212. Ch 50. Kid 61-2. Stra. 1212.

Accommodation Bill

1. By an Accommodation Bill, is meant, a bill drawn by A. for B. and B endorses the bill. now if an action is brought by B or A. A may show that the bill was drawn for the accommodation of B. and he recd. no consideration

2. Again, B. may endorse a Bill for the accommodation of A & the drawer & in such case A is liable to B.

Again a Bill may be drawn by A. on J.P. endorsed by B. & J.P. accepts the Bill for the accommodation of A. & B. The fore Accommodation Bills are of three kinds.

3. If a Bill is for accommodation only and that fact known to the endorsee he cannot recover any more than he paid for it if he paid a less sum than the face of the bill. 1 Esp 261. Peckar 1061. 216. 2 Cur 248. Ch. 51.

4 But when a Bill is drawn for money actually due, ^{if} B draws

Bills of Exchange

is indebted to the drawer, and if the drawer owes the sum due on Bill, the indorsee will receive the full amount, ^{as he has just paid the full amount}
Now here we see the difference between an accommodation Bill & a Bill drawn upon and accepted by the drawer when the drawer is indebted to the drawer. 1 Esp 264. Ch. 52

This last rule holds again when the Bill is drawn in the regular course of business & the holder will receive the whole and the holder will not be full of. And. Ch. 52, A Bill drawn in the regular course of business is one drawn in payment for a debt or for property purchased or for work and labor done.

G. The Consideration of Bills of Exchange

In all cases in which the party may see the want of consideration a fortiori he may aver that the consideration was illegal 1 Blk R 445, Ch 52.

1. Still it is very material to know what parties this illegality of the consideration may beavered. — As between those parties who are privy to the illegal consideration, the illegality is a good defence. Doug 614, 2 C36. Kid 280.

2. And a third person knowing the consideration of the Bill was illegal at the time he received it cannot receive on it. for if he takes on in this condition he must answer the consequences 6 D.R. 661. 1 Esp 168. 1 Esp R. 61. & approved

3. The law will not find any allied writ in favor of a party knowing of the illegality. But in gen. a Party having paid a good consideration & having no knowledge of the original illegal consideration, may recover on the Bill

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4. The law will protect a subsequent bona fide holder when he takes the Bill not conscious of its illegal character, suppose it gives a bill of £ to B, in accord^{ance} with B's bill, making a cargo of goods. This is contrary to law, and B cannot recover, but if B orders it to C, C not knowing of the illegality, may recover Kid 280. Doy 614 or 636. Ch. 53.

Now this rule is predicated only of negotiable instruments. In the case of a bond the rule is different. 1 Y/B 300, 8 id 390. Sta. 1155, 7 Y/B, 607. Bib. 80 to 83. 537. 454. 1 Bk K. 445.

5. But this rule admits of an exception, when the holder bona fide receives a bill after it has become payable he is subject in law to the same defense to which the original payee was liable. This rule has been before laid down in this Title. Kid 284, 283, 3 Y/B 82-3. 7 id 423. Ch. 113, 114, 1 Wils. 230. There are other authorities to the same purport.

As the general rule respecting a bona fide holder is an exception, when the State has declared the bill void with a view of protecting one of the parties. In such a case no one can recover from such party. It is most frequently said that when a State Law declares a given contract void for violating a party to such contract, it makes the contract void as to all recovery from any of the parties but I conceive this to be incorrect, and I conceive the party favored by State to be the only one excluded.

If B has recovered from A & gives B a bill of £ for the holder cannot recover.

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Now if the original parties are perhaps deceased as be-
lieved there no recovery can be had, but if the Bill is en-
-acted to a bona fide holder without knowledge of such illegality
can Ist the estate in fee be gone 646.² 670 n. 2 H. Blk. 647, Ch. 53. Sta
1155, East. 356, 1 East, 92, 1 Ex. R. 274.

c. When the drawer of the Bill is intended to be protected then can be no recovery from the acceptor, (for this would, if not adopted, ^{if} if the acceptor was liable ^{if would} ~~be~~ ^{be} ~~for~~ ^{for} ~~the~~ ^{the} ~~drawer~~ ^{drawer}, for account of the acceptor & liable.

In case of an unrecused Bill, if A. endorses a Bill of £ to B. on an unrecused consideration, as between A. & B. then can be no recovery but if B. endorses this Bill to a bona fide holder without notice of such usage, B. is liable, tho. not A.

But in these cases a party may reveal from any other party, except those who were intended to be protected

Salt. 344. 5 Mod. 175. 9 Mass. 1. 2 Phil. 6. 22.

Mr. Chutez seems that the subsequent folder can derive only from the immediate sources of the Bill. This I should submit to argument at most comes on some future day.
(p. 100.)

"The 'illegality' of the consideration —

- 1st If a Bill of L^y is forged, or. it. & B endorses, the Bill, to C. B is liable for this endorsement, merely in the nature of a new Bill. 2^d Phil Co. 22. 3 Day 12.

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2 Inst 453. I have here said down the rule generally, there is an exceptⁿ to this rule as to the time of payment. That is construed according to the place where the bill becomes payable. Hence if a Bill is drawn in London, payable in Amsterdam, at one year, now this is construed according to the usage prescribed in Amsterdam for usance differ at different places 2 Ch 59, Beane 51. Can. So if a Bill is drawn in this Country payable in Petersburg, "payable the 1st Nov. next." The time must be regulated by the Russian calendar.

The reason of the distinction thus far is that the nature & extent of any contract or agreement ought to be determined according to the construction given to it at the place where the Bill is made, but as to the time and mode of performance, it should be construed according to the rules in the place where the Bill becomes payable.

3. The extent and binding force of the contract are to be determined according to the meaning in construction of the contract when it was made, so that the nature, meaning, & legal effect is regulated by the *lex loci*. but the remedy is regulated according to the *lex fori*, i.e. the law of the Country in which the action is brought, for by the supposing the ^{remedy} process is means the nature of the process, the form of the action, the manner of pleading, &c. in the Country where the action is brought. Thus

2 Inst 453. Ord & Reg 31-2, 1 Inst 6.
2 John R 158. 2 Mass 84. 5 Cranch 258. 302. 2 Stee 733.

This last case may appear inconsistent, I will not, however, dwell upon it for it involves a question soon to be put out at all.

I treat of this under of Construction briefly because as respects the *ex loci contractus*, &c. it will be found under the *Tit. Cont.*

An Alteration of a Bill of Exchange

1. It is a rule that if a Bill of Exchange is altered in the hands of the payee or any other holder subsequent in a material point, this operating alters the contract. The drawer is discharged forever, and subsequently bona fide holder without notice cannot recover from the drawer, he must take the consequences, for every bona fide holder must be required to pay. 4 T.R. 320. 5 id. 367, 2 H. Bl. 141. Ch. 62-3.
2. These rules in relation to B of E are less strict than those of the C of L in relation to other instruments for if a holder of a Bond, or a Covenant in a Bond, alters it in any respect in the most insignificant respect, he voids the bond and it becomes utterly void. The same rule holds in favour of the acceptor or endorser if the alteration is made, after the acceptance or indorsement.
3. But if a Bill after it is drawn is altered before acceptance, or after indorsement as bonafide holder after acceptance has a claim on the acceptor. I conceive. in such case, *Beauv. Plac. 194.*

The obligation of the Drawer.

1. The drawer by the very act of drawing a Bill, comes under an implied obligation to the payee or any subsequent holder that the drawer is legally capable of accepting.

Bills of Exchange

That he is to be found at the place described in the Bill,
 That the drawer will accept the Bill in writing,
 And that after accepting, the drawer will pay the
 sum without any delay or hindrance.

Doig 55, 2 H. Bk 378
 1 E. 16 511. Ch 63-4. 70-2. La Ray 7. Ven 1087.

2. The sum entered engagements (is implied engagements)
 is entered by every endorser to his endorser and to
 every subsequent indorser or holder. 3 E. 481. 3
 Mass. 557. 4 H. 144.

If there is a failure in any one of these engagements
 the drawer becomes liable before the bill be-
 comes payable, suppose, at the drawer draws a Bill pay-
 able in six months on B an infant, & the payee has a cla-
 im on A immediately, for the instrument fails immen-
 -ately on 1/2 of B's infancy. Doig 55, 1 B. 669. 3 E. 1687. Bull. N. P.
 269. Ch 64. 100. 136. K. 109. E. 111. 67. 1352. 139. 3 H. 16 17.

The sum will hold to every indorser and his endorser
 and every subsequent bona fide holder. 3 E. 481.

3 E. 481. 4 Mass. 557. - 4 H. 144. 3 H. 232. 1 E. 366.
 n 42.

3. This obligation is irreversibly entered by the act of the drawer
 or indorser or any extrinsic subsequent act. Thus if a Bill
 is drawn on a foreign country and by the law of that country
 the drawer is forbidden to accept, the drawer becomes in-
 -curring with 1 H. Bk 378. K. 111. Ch 64.

The holder may lose all these engagements by his
 neglect. This I remark generally.

(C) Presentment and Acceptance

1. It is in some cases necessary and in more cases expedient for the holder of the Bill when he receives a Bill to present it for acceptance. It is not however in all cases necessary. Now whether it is or is not is determined according to the form and construction of the bill -

When the instrument is payable (on sight) within a limited time after sight, a request for presentment is indispensably necessary. *Red 117, 1 H Blk. 565, Ch 66-7, R. 202,*

2. But when a Bill is payable within a limited number of days or weeks or months, there is no actual necessity of presenting the Bill until ^{the time of} payment, but it is well in such case to present as early as convenient. *2 R. 712, 5 R. 2670, Com Dig Merchant T. 8, Red 118,*

3. And when it would otherwise be necessary the holder may excuse his omission by proving that the drawer or any indorser had no effects in the hands of the drawer. Now, that is means by effects in the hands of the drawer is that the drawer has the goods or money of the drawee or that the drawee owes the drawer the debt.

*2 H Blk 336, 569, 2 Y R 77, 1 Bk R 302, Ch 68, 87, 102, 132, 202-3
2 Comm C, 126, 4 Cranch 161.*

The reason of this rule is, the legal presumption is that the acceptor has the effects of the drawer or indorser in his hands.

If the drawee has effects or owes the drawer, it is presumed he will accept. But if he has no effects of the drawer in his hands. It can be given in going to the drawee if he has no notice.

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- 4 Presentment for acceptance may be excused when the Party can prove that the drawer could not be injured by the neglect of the holder. This is a general rule laid down, is not,

When the Bill is then payable after sight presentment is indispensable, and the presentment must be within a reasonable time, as it is sometimes expressed, "that the holder must use due diligence" which is tantamount to the former. If the holder resides in the neighborhood of the drawer, a short time of course is allowed. The distance regular conveyances, or whether there be a conveyance or no, is taken into consideration, the question is, take reasonableness of the time, is a question of Law, aff- the facts are established, 2 H Blk. 569, 4 Y.R. 425 Ch. 68-9, Kid 117-18.

5. Where in the place of presentment, thus an established hour of business, the presentment must be within those hours, and one at a different season of the day is not valid. In large commercial towns such established hours are frequent, see all monied institutions as Banks &c. — Kid 125, Ch 69, 148.

- 6 It is said that the drawer is bound in strictness either to accept or refuse instantly on presentment, but this is not now the Rule. It is usual now to leave the Bill 24 hours in the hand of the drawer, & in such a case if the drawer does not accept within such time, the bill is considered as dishonoured.

See Dig. Mact. F. C. L. Ray 281, Ch. 70-72.

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7. If the drawer is not to be found if he does not
 credit a cannot be found & is ipso facto absconded.
 the Bill is in either case dishonoured. There is no need
 of pursuing the drawer. If he is absent as in unavailability
 the case out of court it is not dishonoured, 1 Esp 16 576
 La Rey 743, Kier 125, 127, Ch. 70, -89, 128, 136.

8. But if the place described was right at the time of draw-
 ing the Bill and the drawer afterwards removes before
 presentment, & in such a case presentment must
 be made at the last place of residence the 1089,
 Ch 135-6, 70.

But if the drawer has left the Kingdom or the State
 before presentment, the holder may treat the Bill
 as dishonoured. He is now bound to pursue the draw-
 er out of the State and these States are Foreign
 in these respects, and so decided by the C^{ir}l Court of
 the U.S. 1 Esp 16, 571, Ch 70.

9. If the drawer should die before acceptance pres-
 entment must be made to his personal repres-
 entatives. "If to be found in such a circumstance," I know
 not the reason of this qualification, meaning there
 is none in case of a removal after the bill is cleared,
 This last rule is a 1st Law.

Ch 70-1 132, 136.

Acceptance

10. Presentment being made acceptance or refusal is
 immediately necessary

1. The acceptance of a Bill is the act of engaging to pay
 it, or in other words to comply with its request to pay it.

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2. An Agent may be constituted for the purpose of accepting, but the Agt. must show his Authority to accept. It is at least doubtful whether the holder is bound to take up with the acceptance of an Agt. in any case. I am of opinion he cannot be bound to accept in such a case. It multiplies proof. Beanes Plaiton 87. Ch 23, 71-2, 1 Esp. 16 115, 269.

3. If the drawer is an Infant or a Person of S. C. is otherwise incapacitated to accept. The holder may treat the Bill as dishonored. Ch 63, 71, 72.

In such case as the last rule above, an immediate right of ac. accrues.

4. A promise to accept in future has the effect of a present acceptance and this rule holds tho. the promise to accept be verbal. The Mercantile Law by the way requires the utmost integrity in acceptance. Bul. N. D. 370. Cowp. 573. 3 Burr. 1669, 5 East 514.

5. And a promise by the drawer to the drawer to accept a Bill to be drawn in future, is an acceptance in future, provided the case is attended with any circumstances that may induce a Third Person to purchase the Bill, Cowp. 571, 573, 574, 1 Esp. 98, 3 Burr. 1663, Keil 74, 81, Ch. 77.

6. Acceptance after the day of payment, will bind the acceptor himself and in such a case —

The drawer & Endorser are discharged, unless there had been presentment and acceptance within the proper time and notice of the new acceptance given.

12 Mod 410, Ch. 73-4-81.

7. When there is such an acceptance. That is after the time of sight. There is an implied engagement, to pay so instantly. For it is now impossible to pay according to the terms of the Bill. 12 Mod 410, 364, 574, Falk. 127, 129, Colth. 45, Ch. 74. 12 Mod 410, Com. 16, 75.

8. When there are Bankrupt Deeds. It is a very important distinction to the drawer, even if he has the effects of the drawer in his hands. He cannot accept with safety if he has heard of the drawers failure. But if he accepts without knowledge of the drawers failure he is not liable to the assignees, 2 Hen Blk 334 746, 711, Ch 74, 151-2.

Of the kinds of Acceptances

9. The acceptance of a Bill may be either absolute, conditional or partial. and the acceptor is bound in either of these acceptances. But the holder is never bound to accept of any but an absolute acceptance, but he may if he chooses, take up with a conditional or partial acceptance. Ch 23, 74, 103, 180, Stew. 214, 2 Wils. 9.

But if the holder is satisfied with an acceptance varying from the tenor of the Bill, it may be so accepted. And then if he gives due notice to the principal parties of the nature of the acceptance. He does not discharge them by such acceptance. But if he does not give due notice. The drawer and the indorser are discharged. Stew 214, 648, Com. 452, 2 Stew 1152, 1194, 1212, 11 Mod 190, 1 W. 182, 2 Wils. 9. Kid 152 to 156, Ch. 74-5, 78 to 82.

What act amounts to an acceptance is a question of Law. What facts exist as to the claim of the case on the acceptance is a matter of fact. 1 W. 182, 186.

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1. An Absolute Acceptance is an engagement to pay the Bill according to its tenor i.e. to pay the Amount at the time appointed and if a place is mentioned, at the Place, also. *Rid 74 Ch 75*

2 An acceptance may be by Parol tho, the present usage is to accept in writing. The usual mode of accepting in writing, is by writing on the Back of the Bill, "Accepted," & signing the drawer's name, or signing his name only.

If he writes the word, "accepted," that amounts to an acceptance, *Ch 73-5* even if he signs not his name.

This rule is a very comprehensive and a liberal one & Gen. any act of the drawer which evinces his consent to the acceptance of the Bill, amounts to an acceptance.

On the bill being presented, the drawer writes on the Bill, "seen." Again the drawer writes, "presented," Again the drawer writes, "The day of the month," on which it was payable, at direction to a third person, to pay it. And it seems any writing whatever on the Bill which does not amount to a refusal is an acceptance.

Bur & P 270 Ch 76, Comb 401. Rid 80.

That an acceptance may be by Parol, *vide Stea 648, 1000. 3 Bur, 1674, Cowp. 571. 2 Mil's, 9, 1 East. 103, 4 id. 72.*

3 But an engagement to accept a Bill if (above) obtained by fraud or misrepresentation of the holder will discharge the acceptor from liability - and he is not bound.

3 Bur 1668, Ch 77.

What amounts to this would not bind him as to the party concerned in the fraud & misrepresentation, But as to a

Party being a bona fide holder and having no knowledge of the fraud, Commission justice would require that the commission holder should not suffer by the fraud of a prior holder.

4. A written acceptance may be upon the Bill itself or upon a separate piece of paper. It may be done by writing a letter, and an acceptance may be without writing —

Allen 648. Keil 69.

5. An acceptance may be implied But to constitute such a one, there must be such a circumstance from which it may be inferred that the holder was induced by the drawer to consider it as accepted. A presents a Bill to B. B after some time examining it returns it to A & said 'There is your Bill it is all right.' (This) the Ct held this was ^{be} an acceptance. If the drawer had intended to deceive the holder, the Ct decided it was not.

1 Dep 16 17, Ch 78. 1 YB. 269. In Hardwick R. Cas. Bank. Hardwick.

75. in which case the doctrine is repugnant to the above principle, this case in Hardwick has no weight.

6. An acceptance may be implied from the drawer, keeping the Bill a long time. However such an implication may be rebutted, he may remove this presumption by proving accident, or some casualty in contract. 1 YB. 611. Ch 77. Hardwick 278. Ch 77.

7. Every act of the drawer which gives credit to the Bill and induces the holder not to protest it or proceed on the other parties, is an acceptance. Buller 27 — Keil 80

Conditional Acceptance

1. A engagement to pay a Bill not absolutely but upon some contingency event is called a conditional acceptance 1 YB 182, Ch 77.

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In such case, if the holder acquiesces in such acceptance, he must give notice to all the parties, to whom he is tendered to hold, of the nature of acceptance. But the holder need never acquiesce in a conditional or partial acceptance.

But the acceptor himself is bound *Kid 161, Stea 1152, 1212, 2 Mils. 9, Ch. 14, 5, 79 to 81, 103, 180, 23.*

The following cases are considered as conditional acceptances.

1. "I accept on a/c of such a ship, when I rec^d the arrival of the cargo," or "I accept to pay as soon as certain goods of the drawer are sold," is such, *12 Mod. 447, Comb 571, Stea 648, 1 P. W. 182,*

2. But an acceptance originally conditional, becomes absolute on the acceptor as soon as the event on which it becomes payable happens *Stea 212, Comb 571, 1 P. W. 182,*

3. If the acceptor is in writing, "any condition inserted to be annexed to it ought to be in writing, for any verbal condition in such case will not secure the acceptor, as a subsequent holder, for valuable consideration & even it is not binding on a subsequent holder (provided he received it from a subsequent holder for valuable consideration,) even if he the first subsequent holder gave no consideration for it *Hard. 123, Doug 286 or 286, Ch 81.*

Partial Acceptance.

1. A partial acceptance is an unconditional one valueless still from the tenor of the bill as an acceptance of part of the amount or to pay the whole at some future time, *Stea 214, Comb. 452, Meloy V Men 286, 83, 11 Mod.*

But thus the holder may refuse, he is never bound to accept unless it be absolute, so that if the drawer gives a partial acceptance the holder may treat the bill as dishonored.

If the holder acquiesces in such partial acceptance he must give notice for his own security give the draw

or endorsement. Ch 82. 51. 19. 182.

But if on such an acceptance he gives notice after such partial acceptance to the prior parties

- 2 If on a partial acceptance offered, the holder gives notice to the prior parties notice of non-acceptance he waives the partial acceptance, and all its benefit. 19. 182. Ch 82. 53. 157.

What obligation is created by Acceptance

1. By an absolute acceptance the acceptor is bound of course to pay according to the tenor of the Bill.
2. By a conditional or partial acceptance he is bound to pay according to the tenor of the acceptance 49. 182. Bailie on Bills 42. Post on Contract Pleas 115. to 117. 164.
- 3 As to third persons i.e. all persons except the drawer & the acceptor. an acceptance is binding the maker with out any consideration moving to that acceptance. A third person is not subjected to that equitable defence which is allowed between the prior parties 117. 182. 8. 3. 182. 416 339. Ch. 9. 50 2. 82. And according to the general rule that the nature construction and legal effect is determined according to the ^{Contractus} Lex loci. The construction and legal effect of acceptances is determined according to the law of the place where the acceptance is made.

If then an acceptance is made in a foreign Country by the Law of which the acceptance becomes void, by any event or cause whatever. It is of no avail and is void in the Country where the Bill is drawn.

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Stat 733. Ch 59. 64, 83. Discharge of acceptance.

3. An acceptance may be waived & released by the holder, even without deed and even without writing. There is no difference at C Law between a ^{cont^d by} writing cancelled and a parcel contract. Doug 246, last Ed 247, Ch. 83, 197 Rob Dig 47.

4. After a Bill has been accepted if the holder verbally agrees to waive the acceptance It discharges the acceptance, & message sent to another by the holder stating that he waives the acceptance & promises in a discharge, so as to cut off in over Book that he considers the Bill as not a acceptance as waived. discharges the Acceptor's liability. It has been a point debated whether the holder received full payment from the drawer and the indorser and having enlarged the time of paying the remainder. Amounts to a waiver of acceptance - Doug 248. Ch 84. 156-7.

I can conceive no possible ground for such waiver of acceptance. I cannot see how the acceptance can be effected by the holder giving a drawer and endorser an enlarged time, and receiving a part of the claim. I should think it would operate in favor of the acceptor. 2 Wils 262, 1 Ch 16507, not to discharge time but as operating in payment.

5. There has been one strong decision respecting an alteration of a Bill in the Cts of King's Bench in the time of Lord Kenyon. "This was as follows: A drew a Bill payable to C or B. C before presentment for acceptance altered the Bill. It was as follows. A drew a Bill payable 1st Jan^y or B. upon presentment by C. B. altered the bill and made it payable 24 March. C received the Bill and the bill was altered back payable 1st Jan^y upon presentment. The acceptor refused. The bill was then altered by dating out 1st Jan^y on maturity 24th March coinciding with the original period of acceptance. Lord Kenyon held that the holder might receive

A Bill had been made. The holder had destroyed it by
altering it. This is certainly opposed to the rules of
the Com Law which holds that if an obligee in a bond
a Covenantor in a Covenant, or any one signing under
a bond or Covenant, attests it in the most trivial manner the
instrument becomes absolutely void, 4 G. R. 336. Ch. and B. 85.

6. There are various modes in which an acceptance
may be discharged. Thus a future consequence
to the acceptor and his prospect of profit from his
consignment, being destroyed by the party consigning afterwards
receiving the property to himself, as receiving a Bill of Lading
at N. Y. draws a Bill of Exchange in Liverpool and requires
B to accept it for the credit of this Consign-
ment. B. accepts on this consideration. & afterwards
it takes the Bill of Lading which belongs to B. This
act of discharge B. Ch. 85.

7. Another has been mentioned, a Conditional or Partial ac-
-ceptance is varied and discharged by returning non-
-acceptance — 1 G. R. 182.

8. The act of acceptance according to the terms of the
Bill always implies that the acceptor has the effects
or goods of the drawer in his hands. Kid. on B. 156. Bensus
Ly Mercatolius 55 1 Mil. 185. Fulk 130. & Led Ray 88.

A simple acceptance in common form always
carries an implication that the drawer has effects of
the drawer in his hands. If then after an acceptance
there is nothing in the terms of ^{the Bill} which shows that the drawer
has no effects in the hands of the drawer and the drawer
is made liable on the bill. The drawer may maintain
an action on the acceptance. But the presumption
of the drawer's holding the effects of the drawer may
be rebutted, 1 Mil. 185. Kid. 156. Ch. 163. 191. 203.

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There stand the rules as between the drawer and the acceptor. But the rule is different as to the payee and acceptor, and the endorser and acceptor, and the endorser is entitled to notice unless it can be proved that he gave no considⁿ for it. 1 Galb 127, 1 Mils 187, 190. Kid 156.

- 9th If the holder of a Bill makes the acceptor his Ex^r the acceptor is discharged at law, if he dies and leaves no acceptor his Ex^r. This discharges as between the Ex^r and the holder's representatives, but not as to Creditors. It does not do this here for if the acceptor is discharged the prior parties are all discharged. The obligation of the acceptor is primary, and those of the other parties is secondary so a discharge of the primary obligor discharges the other obligors. 1 Roll 192 Galb 299, 2 Blk 511, 512, 3 id 118.

Non Acceptance, & Notice,

- 1st Non acceptance, is a refusal to comply with a request in a Bill.
- 2^d Presentment is not indispensable in law unless in the case where there is a limited time after sight and request &c. When there is a time fixed for payment the holder need not present the Bill until the day of payment. But in any case, if presentment has been made and acceptance is wholly refused or is offered conditionally or partially, notice must be given to the prior parties and they will be discharged. Such is the gen. rule. This giving of notice is such as that the prior parties who may otherwise be prejudiced, may have a chance of securing themselves. One of three parties must give this notice. 5 Bos 2670, 19 B. 712, 1 Den. 45, Long 658, Casb. 612

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Ch 54, 65, 86, 158, 202

3. A case formerly held that when the drawer or any co-drawers was sued and his defence was want of notice of non-acceptance, he the drawer or endorser must prove absolute damage occasioned by such neglect of the holder, as to show that he the drawer had been prevented from collecting his demand by such neglect, 12 Mod 15, Comb 152 Ch 87. But this rule is now entirely exploded for when there has been no notice of non-acceptance given, the law presumes actual damage, and according to the general rule the drawer or endorser is discharged.

4. It is indispensable on the part of the holder to prove that the drawer has sustained no damage. This he may do by proving that he the drawer had no effect in the hands of the drawee, so if the action is brought vs the payee and the proper defence is that he had no notice, the holder may show that the payee gave no value for the bill, which dispenses with ^{notice} 1 Ben 45, 17 B 406, 409, 3 id 182, 2 Hen Blk 612, Ch 132-3, 191, 203, to 205, Kid 129, and onward.

5. If from the date of the Bill to the time fixed for payment, the drawer has had no effects in the drawers hands, he is not entitled to notice, for what damage can he sustain by want of notice. He has no claim upon the drawee, 17 B 403, 412, 2 id 713, 5 id 239, 2 H Blk 610, 1 Bp B, 333, 2 id 551, 3 id 158, 1 Bn & P, 652, 3 id 230.

This last rule has created a deal of confusion.

But if the drawer had effects in the hands of the drawee the fact that the drawer has sustained no damage for want of notice, does not dispense with the necessity of notice. The drawer must have notice if he has effects in the hands of the drawee.

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3 Esp R 158. 1 id 333. 7 East 359.

Q. There has been a decision with regard to a promising note which
 rescinded by endorsement. It was decided in the Ct of Com Pleas
 — by Ch Justice Eyre — that the buyer of a promising
 note with a full knowledge of the maker's failure and the
 maker continuing insolvent to the time of payment, cannot
 defend for want of notice of non payment by the maker
 of the note 2 Hec Blk 336. 1 Esp R. 302, 1 T. R. 410.

As to this case the principle is this, as the endorser knew,
 that the maker was not able to pay on account of his failure
 he was not entitled to notice. It has been said that this
 case has been overruled in Eng^d. But it has not. vide —
 2 Hec 1860, 13 Lest 187. 7 id 359. These cases are all different from
 the first case but do not overrule the case of Hec Blk.

2 Com R 126. 2 Com R 343. 4 Cranch. 161. 10 All app. 52. 2 Haywood.
 45. all these decisions explode the former Eng^d decision.
 The principle of these & last decisions is, that it is
 inexpedient and dangerous to public policy to multiply
 exceptions to the general rule when such might require
 might easily be complied with.

Y. When the drawer has no effects in the hands of the drawee
 the drawee is not entitled to notice the fact that the endorser
 has effects in the hands of the acceptor is no plea for the drawer
 as defence in want of notice. 1 Esp R 515. Ch 88.

And it is sufficient to entitle the drawee at all events
 to notice, that he had effects in the hands of the drawee
 when he drew the bill tho he might have withdrawn
 them before presentation of the Bill. no subsequent circum-
 stance whatever will dispense with such notice to the
 drawer, hence if after the Bill is drawn the drawer
 should become a bankrupt, the drawee must have

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notice of the drawer does before acceptance, Dory 497.
315, case of Raper vs Langstaff, 19 B. 408, 2 id. 336. 24 Bk
612, 7 East 359, 1 Esp. R. 334, Ch 88. Kid 131.

Now the ground of this rule is that the drawer when
he parts with the Bill and the holder when he receives
it expects that notice must be given in non circum-
stances.

8. The same rule holds in favor of an endorser if he is
-acted into a valuable consideration for it. If he gave any
valuable consideration no supervening cause can dis-
-ence with give notice to him, in such a

9. If the drawer has before hand informed the drawer that he
cannot accept the bill. This does not dispense with no-
-tice to the drawer. for the drawer may assume to have
his mind. 24 Bk 612, 5 B. 239, 1 id. 405, 285, 712, 1 Esp
R. 332, 315, 3 P. 1355, 1 B. & P. 652.

10. The drawer having had no effects in the drawer
should afford presumption evidence that the drawer
has intended no drawer for want of notice, but
this presumption may be rebutted. Ch 87, 89, 2 B. 6,
413. the above rule is doubted by some Kid 131 to 136. 19 B. 114.
Pemberton, evidence 203 n

11. If the drawer abscond he is not entitled to notice
in such a case the holder is not bound to search
for him. 1 Esp. R. 516. Ch. 89.

12. The neglect of the holder to give seasonable notice
is excused by illness, death, or any inevitable casualty,
provided, he gives notice as soon as the impediment
is removed. Ch 89.

13. When the drawer makes a conditional acceptance

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The terms of which are complied with by the holder no notice is necessary. Thus if the drawer says I accept this bill provided you indemnify against another person now if the holder agrees to this, the acceptance becomes absolute and of course no notice is necessary.
 Rules B. 11. Ch 101. 89. 90.

- 14 If the drawer accepts for part of the Bill only, notice should be given to the prior parties of the nature of the acceptance, but the prior parties are bound as to the sum accepted without notice, *v. S.* Suppose a Bill drawn for \$1000 the drawer accepts for \$500 only Now if the ^{holder} ~~drawer~~ intend to receive from the prior parties the \$1000 he cannot give notice to them. But if he gives no notice they are bound for the \$500 only. *in Aust*

Mode of giving notice of Protestation.

It is to the mode of giving notice. There is an Island Bill and Differet.

1. When an Island Bill is dishonoured there is no particular form. It is sufficient if the drawer receives notice in any way whether in writing or verbally.

2. But in the case of a *£* Bill being dishonoured there must be a Protest, and there must always be a Protest, & if the drawer was present and heard the request & knew of the non acceptance yet Protest notwithstanding.
Ed. Reg 483. 6 Mod 8. 1 Salk 171. 1 K. 170. 2 ib 713. 5 ib 239. Kid 136.

3. The evidence which the law requires in cases of Protest cannot be supplied with any other evidence than the of protest. There must be a conventional mode of proof

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in case of G. Biles, notice is given to the holder.

4 This Protest is regularly the act of a Notary Public. he certifies the fact that the Bill was presented for payment and it was refused. This certificate is called a Protest. A Notary Public is an officer recognized by all laws, by the laws of all nations. A certificate from any person of even the highest reputation, a Coach, would not answer. It must be by a Notary Public, 1 Thom 164 Meloy B.2. Ch. 10 Sec 17, Ch. 90-1. So that the most obscure Notary Public will have the right to prove a protest here, in any Kingdom in Europe, as to the forms of making the protest, and rules respecting it, see 144, Ch. 161, 92, 159.

5 By the Stat Law of Eng. in cases no Notary Public can be had, it may be protested by any person in respectable standing.

6 This Protest is to be made generally when the Bill is dishonored. But if a Bill is drawn on B in the town of C, & made payable at D. The Bill may be paid either at C. the residence of B or at D. Ch. 92.

By this protest, there must be prefixed a copy of the Bill otherwise the Bill could never be identified.

But it is not necessary in giving notice to the parties that a copy of the Protest, be sent. But there must be notice of the fact of a protest. 2 H B 11569, 1 Rep 1651, 572. 12 Mod 309 Bulst & P 271

It seems however by the Customary law of France that a copy of Protest must be forwarded to the parties.

Upon the ^{non} acceptance of a Bill no ^{protest} is necessary. Any act of the drawer amounting to a refusal of the Bill is a non acceptance. The act of the drawer

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C. 1100 80. 1 Folio 131. 310 69.

La Ray 992,

There is a decision in 1. H. R. 169 which says that the note must be accompanied.

Ch 93. 7-8.

7. An Inland Bill cannot be protested. It is no evidence at all of non acceptance. By Stat. Am. in Eng? The note must be such protest in certain cases, not for the purpose of holding the prior parties to the bill, but when a remedy could not otherwise be had for damages etc. See 910. H. R. 143-4. Ch 93. 4

8. I find it is a constant practice in this State to protest Notes of inland Bills of exchange. This is the practice of Banks. How this originated and what can be the object I do not know. I can see it can have no effect it is entirely nugatory.

9. In the Case of Foreign and Inland Bills of Ex. Notes sent by Mail so that it may reach is sufficient and if it never reaches them. The prior parties are the risk 2 H. R. 509 B. R. 199. Peck. Ex 221.

And when there is no mail. Sending by the first direct and delivery conveyance is sufficient and this is sufficient. The same other common conveyance may exist. 2 H. R. 565. Ch 95.

10. And a delay beyond the time may be excused by illness death &c. in fact.

11. Notice of non acceptance and in case of a F. Bill notice of a protest must be sent within a reasonable time to all the prior parties to whom the holder intends to resort for payment.

The facts being ascertained the question of Law is submitted to the Ct. as to the reasonableness of the time. The Jury find the facts and then determine the question of law by the direction of the Court, 2 H Blk 568, Bul AR 1271, 6 Ex 3, 1 Com 248, 8 John 177.

12. The Rule was formerly, that notice of the dishonour of a Bill if given within 2 months was sufficient, But. 1 Mod 27, 12 Co 15, Comib. 152. Indeed this was the rule about accusatory suits. But the rule now is that notice should be given on the day of non acceptance, if that is on that day a Mail or a daily conveyance, if not on the next Mail or a daily conveyance. 4 Blk 174, 1 Co 168, Day 177, 2 H Blk 568, 2 Tra 829, 1 Ed Reg 743.

13. If the prior parties occur in the same place where refusal is made, notice must be given to them on the day of non acceptance if it be possible, for then no more. It is required 1 Blk 168, Keel 126, Ch 97.

Who must give notice.

1. The Holder of the Bill must give notice, he may do it by agent or mesproc. Ed Regon. decides in 1798. that the drawee might give notice, but I conceive it belongs to the Holder to give notice. 1 Blk 167, Keel 126, Ch 98.

2. But it seems that notice given by any one party who has a right of action on the Bill will serve to the benefit of any other party who eventually may have a right of action on the bill. I cannot move on that point has been previously decided. Bulin 83, Ch 98.

I think that when notice must be given it must be given to all the prior parties to whom the holder intends to resort.

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14. The drawer has no effects in the hand of the drawee & is not entitled to notice, yet the endorser must have notice. It cannot be dispensed with. If he gave any value for the Bill 1 Y.R. 712 Peckh. 202-3 n. Pleas Co. 220. And want of notice to the (drawee) endorser is no ground of defence to the drawee, neither is want of notice to the drawer any defence for the indorser. *Stea* 440, 2 Bn 669, 1 Esp. R. 334, n. 1 Ld Ray, 443. Ld 99. 203. *Johnson* the rule of this rule was supposed to be law. 1 Ld Ray 443, 1 Tulk 131, 133. *Then* came in Ld Ray & Tulk are not now law.
15. But the consequence of this neglect may be avoided by many matters various, ex post facto. Thus if a party entitled to notice pays part of it after it has been dishonoured this post payment amounts to a waiver of all objection arising from the want of notice and a denial of his liability for the whole amount. & the rule is, the same if he promises to pay a bill accepted. This amounts to a waiver of notice. *Stea* 1240. 2 Y.R. 713. Balch & 270. 1 Esp. R. 57. Peckh. R. 202.
16. It has been held however that if a party pays who is entitled to notice, promises the holder to pay the Bill but without a knowledge of the fact of the dishonour of the bill. The promise does not bind him 1 Y.R. 712 5 Bn 2676. Ch 102. But I take this doctrine now to be reversed, as I think it certainly should be. for it has since been decided that such a promise constitutes admission on his part that he has had notice, and proof of this promise, will support an averment in the Dec. that he has had notice. *The Lex Mercatoria* is so stated that he is bound to keep his promise 1 Esp. R. 334. 2 Bn 231. 236. 2 id 469. 1 B & P. 326. Ld

17. Lord Kenyon once held that a promise by a person to take up the bill would not bind him, if he was ignorant of the consequences of the want of notice, *M.P. Ch 102. 3. T. 1811.* As to this I think it requires no great self-accusation to say it cannot be law, to suppose it would be to allow a person to bind himself to answer his ignorance of the law, which is never admitted, unless it be in criminal cases, where the parties' ignorance being so great, should go in mitigation of punishment, 2 East 469. Lord Kenyon went still further, he held that if the drawer paid the bill ignorant of the consequences of want of notice, he would be entitled to recover it back, though he paid it voluntarily *Ch 102-3 T. 1811. 158.* It seems answer to this view, 2 East, 469.

18. In case of a conditional acceptance the want of notice is cured by the performance of the condition before the Bill becomes payable, in every such case the condition becomes absolute by performing it before it becomes payable, suppose that on a Bill payable 60 days hence, I accept this bill provided you do not an act within 30 days, now when the holder does ~~not~~ that act within the 30 days, the want of notice is cured because the condition when performed constitutes an absolute acceptance, the promise of the acceptor becomes binding, 1 T. 212. *Comb 571. 17/6. 182. 174. 182. 174. 182. 174. 182.*

Acceptance Supra Protest

There is one kind of acceptance called an acceptance supra protest. When a Foreign Bill is protested for no acceptance it may be accepted supra protest after the drawer has returned, by any person, who

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for the Honor of the drawer *Beau 456. Ch 23-103-163. 180, 209. Kie 152 to 156*

180² - There are many instances when this is made by the drawer from abundance
139 of caution or when a bill is drawn on him on account of C. instead of B. the drawer
171 B. or him he may be willing to accept for the drawer but not for C. so that

269, he may refuse to accept for C. and accept for the Honor of the drawer.
This mode of acceptance operates to defeat the presumption that the acceptor had
effect of the drawer, so that the legal interest is that he accepts for the Honor
of the drawer or rather to be paid *Kie 156. Beau 455.*

So the effect of such an acceptance is to give the acceptor a right
of indemnity on the Bill so that as it gives him (himself) a right of in-
demnity as there party for whom he accepts so as against those
party it gives him a right of recovery from all prior parties,
so that if he accepts for the Honor (i.e. the Honor) of the drawer
he has a right of recovery from him and all prior endorses. *Ch*

171 B. 269. Kie 153-5. 1 Bev or B 139

4. But the contrary when there is a simple acceptance, the acceptor
a can recover no right other except the drawer, and
even as the drawer he can recover only on the ^{acc.} acceptance
and not on the Bill. - If the acceptor accepts *supra*
protest, his action is founded on the bill.

An acceptance *supra* protest, reverses the obliga-
tion on the bill as between him and the party for whom
honor he accepts.

5. But it gives the acceptor no right as against any sub-
sequent party, so an acceptance *supra* protest for the
Honor of the drawer gives him no right as the sub-
sequent endorser, so an acceptance for the Honor of an
indorser will give him no right as a sub. endorser
any stranger to whom the drawer never means to be
- even indirectly may accept for the Honor of the drawer
and thereby create a liability on the drawer -

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Cont^d 129. K^{id} 123. Ch 104-5.

6th An acceptor supra protos for the honor of the Bill is the same as for the honor of the drawer.

But an acceptor for the indorse that is for the honor of the indorser ~~is~~ not for the honor of the Bill — K^{id} 153. Ch 104-5 — — —

7th And a Bill previously accepted by one person for the honor of one party may be afterwards accepted by another person for the honor of another party, and the nexus between person and parties to an infinite extent.

Receives Plus. 42. Ch 104.

8th If after acceptance sup. Prot. by a Holder the drawer should become willing himself to accept afterwards, his acceptance may become substituted for that of the Sup. Protos.

Protes. with the consent of the Holder, & not otherwise. Receives 45. K^{id} 154. — Form & mode of Accepting, sup. Prot.

As to the form or mode of accepting supra Protos, vide Ch 105. K^{id} 153.

Now as to the obligation created, the acceptor in this form is as binding upon (upon) the acceptor, as if no protest had been made, he. the acceptor becomes bound as in a simple acceptor. La Reg 575. 12 d^l 410. Com. R. 76. B^u 1672.-4.

I shall express in 2 rules the extent of the obligation on the one hand and the other, the right acquired by the acceptor, ^{1st} (as to) the liability of the party, sup. Prot. to the Holder & indorser is the same as that of the party for whose honor he accepts, hence if one accepts for the honor of the drawer his liability to the other parties is the same as (the) that of the drawer would have been had the bill have been dishonoured

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1. Exp. No 113. Bearer 45%. Ch 105. Kid 153.

If the acceptor supra protest, accepts for the honor of the 1st endorser the drawer is liable to the acceptor as well as the endorser, and if he accepts for the honor of the second endorser and becomes liable to pay it he may receive from the 1st endorser and all prior parties.

In a word if one accepts supra protest for the honor of the drawer he may become liable to all the parties subsequent to the drawer, and all the prior parties are liable to him. On the other hand if he accepts for the honor of a particular indorser he becomes liable to any subsequent endorser provided the second endorser is subject to the payment of the prior, but if he accepts for the honor of any one indorser he cannot become liable to any prior endorser so if he accepts for the honor of the 1st indorser he can never become liable to the drawer, for as to the parties on the bill he assumes the same liability as that of an endorsee, precisely.

If B & C are successive endorsers, acceptance supra protest is made for the honor of B, & C is compelled to pay. If B. now C. may receive from the acceptor. But if the acceptance is made for the honor of the first endorser and the second endorser is liable to pay. A is compelled to pay. The acceptor, so are all the prior parties liable to the acceptor.

Bearer 57. Kid 153. Ch. 105.

The conclusion then of these remarks is that the extent of the acceptance is to bind the acceptor as to all subsequent and not prior endorsers.

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2^d As to the right of the acceptor, I observe that the acceptor for the honor of a particular party acquires the right of that particular party and stands in the same legal situation of that particular party for whose honor he accepts, and he also acquires against that party himself the same right as the party would have acquired had that party have paid.

But an acceptor has a right of indemnity against the particular party for whose honor he accepts and against all prior parties.

In treating of parties standing in so many relations there is apt to be confusion. But it becomes familiar. *see* 14 B. 269. 1 Dow C. 139. 1 Esp. 16. 113. *Kell* 155.

To sum up these latter remarks, I observe that as to the prior parties to him, when he accepts such acceptor stands in the right of an indorser precisely. 1 Esp. 16. 113. Ch. 104.

It follows then that if he accepts for the honor of the drawer the drawer is the only one liable to him, for there are no other prior parties. *Beauv* 459. Ch. 106. 163-4. *Kell* 155.

Transfer of Bills.

1st A Bill containing operation word of *trump* is negotiable in infinitum, so that if a Bill is payable to "order, or to a particular bearer, or a "bearer," generally it may be negotiated in infinitum.

Bank Cheque are negotiable and are substantiated by *Rules of Ex.* 3 *Mis* 211. 3 *Bill* 1517. 1527. 2 *Bill* C. 457 6247

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And whether the terms of a Bill is negotiable or not is a question of Law. 2 Bar 1216. 1 B. & K. 295. Doug 653. n. Watts on Part, 253 to 257.

2. In gen. a valid transfer can be made only by the Payee or other person who has the legal interest in the bill, and therefore when a Bill is payable to or on admⁿ an indorsement by B. will not transfer the interest even if it was indorsed by another person of the same name I would not transfer it. 4 T. R. 28. 1 H. B. L. 607. Ch 121-2.
3. But tho a stranger by endorsing cannot transfer the interest. Yet he is bound by his endorsement, so it is ^{and} then in the nature of a new Bill. Ch 121-2
And this gen. rule laid down as regard the interest ^{share} ^{held} as well of bills which are transferable by bare delivery as those transferable by endorsement, now if a bill is made payable to "A or order", the Bill is transferable only by endorsement only but if made payable to A or bearer, it is transferable by delivery merely.
- 4 again when a bill is payable to "order" and is endorsed in Blank by the payee. then as long as this endorsement of the payee remains in blank, it is transferable by delivery.
- 5 But tho the gen. rule is that the Bill transferable by delivery can only be transferred by the owner, yet in favor of B. persons who is a bona fide holder the rule is different, this B. person can become owner of the bill. If the holder comes into possession of the bill fraudulently or illegally he cannot become owner of it, as in the case of a Bank note if lost and found by an who gave no value for the bill. then the Bank may refuse payment.

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If one has stole a Bill and parts with it to a bona fide holder for a valuable consideration. The Holder is entitled to recover, tho, the bill was stolen 3 Ben 1516. 4 Yl. 427. 1 Ben 452. 4th

Case of 1 Ben. Jelliffe & Grace is the great leading case 1 B.M.B. 485. Dory 611 & 633, Ch 9-110. 121-2. 201-2.

6 In favor then of such a bona fide holder ^{does not} the rule that one cannot transfer what belongs to him is reversed. It is the nature of the thing that requires such a rule. If this method was not adopted, there would soon be an end to Bills of Ex. &c. If the Payer or Holder becomes bankrupt, the right of transfer is vested in the assignees. Speaking of Bankrupts I do not mean Insolvency, but when after the act of B. bankruptcy, but before providing views or him, he transfers the Bill for future value the transfer is good.

Beams 68. 2 H Bk 335. Ch 111. Peake, R. 50. Kid 107.

7 On the death of the Holder the bill is transferred by his Ex^r or administrator. 3 Wils 1. 2 Sta 1260. 1 Yl 487. 2 Ben 1225 1 H Bk 622. Tho the Bill is personal property

8. If a bill is endorsed to two or more the interest and right vests in them all collectively and no one of them alone can transfer, except in the case of them being partners in which case the partner should transfer it in the name of all the partners or of the firm. I.E. he should sign the name of the firm. Dory 653. Kid 106. Ch 28-9. 112.

If a bill is made payable to or for the use of B. the right of transfer at Law is vested in it. The claim of B is a mere claim in Equity; the acceptor does not agree to pay to B. Cuth. 5. 2 Ben 307. 308. Kid 107. 108.

Ch 112. 149.

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9. If a Bill is endorsed to an Infant and the Paper endorses it, the latter endorsement may sever from any of the prior endorsements excepting the Infant.

1 Rep 484. Kid 102

10 This resolves the question whether the act of making a Bill or Note by an Infant is void or voidable. This Court decides fully, that the act is only voidable, for if it was void the endorsement could have no effect, at all, whereas here it has the effect of transferring and vesting an interest.

11 Bills are usually transferred after ~~afternoon~~ but they may be made before sunset, it may be made or done before the Bill is drawn, thus if a person to make a Bill payable to B. and B. endorses his name on the back of the blank paper, which may afterwards be filled up, & the instrument is good, Doug 496, 514, 1 H Blk. 310, 316, 19 Kid 89.

12. A valid transfer may be made even after the time appointed for payment. But he who receives the bill in such case takes it under dangerous dangerous circumstances, for he is liable to be defeated by any equitable defence which could be had between the prior parties. But the transfer is valid and Lister makes this transfer cannot object on account of the lateness of the transfer in any such circumstances which might be had between the prior parties. 1 Ld Ke, 580, 1 Y.B. 430, 3 id 80, 3 Ben 1516, Ch 113 to 15, 7 Y.B. 423, 430.

The reason why the party making this transfer so late, cannot make an objection is, that the transfer is his (own) own act and can have no ground to complain. But this act binds no others generally. Thus the party making it, 1 H Blk 89, 1 Wils 46, 4 Y.B. 470.

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If a Bill of Exchange has been paid at the time of payment, it appears to the person who was then holder and then he endorses it. The endorsement binds him only, 1 Ma Bk 89. 1 Ma 46, 4 N.B. 470, Ch. 115, 176.

4 A Bill paid in part may be endorsed over for the residue, but it is then endorsed only for the residue and the endorser can receive no more. La. Reg 360. Calk 466. 12 Ma 213. 2 Ma 262.

5 The Mode of Transfer is governed by the legal operation and not necessarily by the terms of the instrument. - Thus if a Bill is payable to a fictitious person it is payable to the bearer, because a quotation in Law cannot endorse it. 1 Ma Bk 600, Ch 115-16.

6 A Bill payable to "Bearer" or to "Cash" or to "The order of" is payable to the bearer. If it is endorsed in Blank it is then transferable by mere delivery. La. Reg. 442. Doug 611. a 633. 1 Rep 16. 180. Peakes Rep. 225. There are many authorities to this effect which will appear among the rules.

7 No formal words are necessary to an endorsement any more than to a Bill. It is sufficient that the endorser signs his name upon the back or on a part of the instrument provided it is written by him. - At a this right & this is sufficient to make a complete transfer. 2 Bk 468. Ma 1103. Ma 88 & La. Reg 443. 1 Sa. 126. 128. 130. Ch 116.

The endorsement of a Bill may be either in Blank

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in Mull a testament, Endors^d in Blank ^{writing}
 1. the endorsement in Blank cannot in strictly the law
 see name and nothing written on it. Kid 89 & this
 is by far the most usual way Ch 114.

Such an endorsement however does not per se trans-
 fer the interest, but it gives the holder the power
 of filling it up. in his own favour. This filling up
 is generally done thus "I pay the contents to B a/c of A"
 Salk 126. 128. 130. 12 Mod 192. 244. Com R. 311. Bull N.P.
 275. Stra 1103.

2. When the holder under a blank endorsement sees on
 a the Bill. before the bill is exhibited to the jury it must
 be filled up. This is done usually upon trial. The
 holder may fill up the blank with a payment to
 himself or he may use it (as it is) as a receipt.

3. When under a Blank Endors^d the person receiving the
 money writes a receipt on the name. This is evidence
 of a receipt as agent of A. he writes the endorsement on
 for A and is considered to do it in behalf of A. Salk
 125. Led Key 871. 1 B.M.R. 297. Kid 95-6.

4. It follows from these rules that when the endorsement
 remains in Blank. It may be used in the name
 of the endorser. But if it is filled up to
 B. B cannot (cannot) sue in the name of A. Salk
 125. 128. 130. Bull N.P. 275. Led Key 871. 12 Mod 193. 244.

5. Indeed when the endorsement remains in Blank the holder
 may strike it out and sue in the name of the orig-
 inator. This can be no paying. But if it is filled up
 he could not do it.

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6. An (Blank) endorsement in Blank by the payee makes the Bill transferable independently and it may pass through any number of hands without any further endorsement. - A Blank endorsement is in short an offer to become an Assignee of the Bill to any person who comes lawfully by it. He becomes endorser to any one who comes lawfully by it, so that if it passes through a hundred hands the last person may file it up. Dory. 611. 496, 639. -

7. When there is an endorsement by the payee in Blank, and when it remains in Blank it can never be extended by any subsequent endorsement in full, provided it conveys the intent. Suppose A the payee endorses the Bill in Blank. to B. & B endorses the Bill making the word a order. to C. yet C. may endorse it over, because still the Blank endorsement so contains in blank any Sub. Holder may strike out any intermediate endorsement and fill up the blank in full. Phil 205-6, & 210. 1 Esp. R. 181, 182, 119, -20, 188, 201, Holt 296.

8. But tho. the payee endorses contains in blank, yet a Sub. holder may make an endorsement in full & shall draw not from the Bill's intent but from his limited power of collecting, this prevents any further negotiation, is clear.

9. If the payee makes a Blank endorsement, that Bill may be transferred by delivery, so if A makes an endorsement in full to B, the payee's endorsement, & it is endorsed in Blank by the endorser named in the Bill. The Bill becomes then transferable by delivery, and this is the case between, when

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It is evident that any member of Law in the mean-
 before mentioned, and in such case the latter endorser
 may endorse it in Blank and thereby make it even
 payable by delivery. (Exp R. 182, n. 2, Ch 118, 119.

10 A Bill payable to "order," never becomes negotiable
 (unless) by mere delivery unless it is endorsed
 in Blank by the Payee or some person named who
 has power to do it. Hence it can be transferred only by
 endorsement. The action must be brought in the name
 of the original payee when it is transferred by
 delivery, not payable to order, Yelver 87. (Hear 15th 606.

Long 611. a 633. 617 a 639, Ch 116. Kid 88-9.

1. An endorsement in full ^(#) is an expression to show the
 endorser is made.
2. Such an endorsement is in itself a transfer of interest
 to the person named, it is a full complete contract.
 This proposition does not hold when the endorser
 does not purport an interest but an agency for
 collecting Ch. 118. Kid 89.
3. Such an endorsement by the payee makes the Bill fully
 negotiable only in the first instance by the endorser's end-
 orsement, the bill being made payable to A or order
 and A endorses to B or order. If it is otherwise it must
 be endorsed by the parties to make it fully negotiable
 (Exp R. 182 n. 2, Ch 118-19. Bates 158.
4. And the negotiability of a bill payable to A "or order,"
 cannot be restricted by the payee himself, except
 by express word of restriction. If at the payee endorses
 then pay the contents to B, admitting the words

"or order." It has the same effect as if those words were inserted. Com No. 311. 1 Blk No. 295. 2 Bur 1216 Sta 557.
Doy 617, a 637.
last Restrictive. End as!

Restrictive Endorsement

is one containing express word restricting the negotiability of the Bill. The omission of the word "and not" does not have the effect. But if the endorsement is "pay to B only" or "to B for my use" or "on my a/c" then B cannot endorse the bill. It is restricted by it. in driver terms. Beavers. Plur 119. Ch 119. 20. Doy 617, a 637.

2 But the person who endorses having the absolute power to withdraw the bill may limit the power to whom it pleases and thus stop its currency, in other words B cannot transfer the intent even by filling up a new endorsement. —

2 Bur 1227. 1 Blk No 288. 426.
28.119. Doy 617, a 637. 1 Alk 249.

This rule was once thought to be otherwise. That the person who endorses the bill could not restrict its negotiability but this was a very inconsistent rule. with 2 Bur. 1226. Ch 119.

3. It is said that a Stamp - cannot be made after an acceptance (cannot be), for if amount there is due on the Bill. Because to endorse functional parts of the bill would injure the acceptor to two or more parties etc. different parts. This I take to be correct. & the auctioneer cannot be bound in such case. Ld Reg 360. Croft 466.
12. Mod. 213. Falk 65. Ch 120.

I have a doubt as regards the correctness of the proposition I have laid down (I say, *Head 109*). The decision is correct. But I conceive the measure after acceptance, for a bill, is certainly valid to that amount to the endorser although the prior parties are excused, so that the rule that there can be no transfer valid after acceptance for a bill must be incorrect.

But if a Bill is endorsed for a part of the Bill only, a subsequent acceptance after such endorsement binds the acceptor for the whole, the endorsement being on the bill before acceptance. The acceptor comes under an implied obligation to pay according to the tenor of the Bill. *Beans 266 Ch. 120.*

4. It follows from these rules that a bill can never be subject to such endorsement unless the endorsement was made before the drawing of the Bill. *1 Talk. 65, Ch. 466. Head 109, Led Key 360.*

But though a Bill cannot be endorsed for a part of the amount according to a prior rule, yet after a part of the amount has been paid. It may be endorsed for the residue, for in such a case it does not subject the acceptor to a two fold obligation. *2 Bilt. 262, 1 Talk. 65, Led Key, 360.*

5. To complete the transfer of a Bill the instrument must be delivered to the purchaser. *Ch. 61. 115-21,*

The operation of a Transfer.

I have already said that the transfer of a Bill by an endorser is similar in effect to the making of a new Bill, and the endorser is in almost every respect in the character of a new Drawer. *How* 478. 1 Bur 674. *Talk* 133. 3 *Talk* 68. *Ch* 63. 99. 170. 171. 187.

1. And on this principle a promissory note endorsed by a person becomes virtually a Bill of Exchange, and may be treated as as a Bill of Exchange as to the endorser. If A makes a prom. note payable to B or order & B endorses it to C as order. This is a Bill drawn by B the promisee on A the promisor payable to C the payee & endorser. 4 *Y.B.* 149. 1 Bur 676. *Gibbon* 29-30. 1 *Talk* 132. *Ch.* 121. 170-1.

Mr. Chitty lays down a rule. that a transfer of a bill by an obligor of such an order creates a debt as for a contracted debt at the time of transfer. Subjecting the party transferring in favor of his immediate assignee similar to an endorsement — *Ch* 122-3. 154-200.

The truth of this rule is that such a transfer leaves the assignee liable to pay the debt, provided the drawer fails to pay. but this is not subjecting the party transferring it in like the effect of an endorsement 7 *Y.B.* 64 *Edw* Res 928. 12 *For* 244. 408. 521. 5 *Y.B.* 52. *Kia* 90-91

Suppose A the payee for \$1000. endorses the Bill to B. now B receives from A in full of payment. & ^{an} endorsement by the drawer, the (endorser) endorses on the Bill. A being the endorser, the action in this case is on the Bill.

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Now when the assignee of a Bill transfers it by delivery assigns it, the assignee remains liable upon the Bill. But he must bear his action for the debt for which the Bill was given or assigned, whereas the liability of an indorser is upon the bill itself, so that the assignee in such case cannot operate as an Indorser. In such case I say, the assignee becomes liable the same as in the situation of an endorser.

3. But there is an exception to this rule when the party receiving the Bill assumes the risk or hazard of its being paid. 7 Y. R. 65, 66 Holt, 121. Ch. 123-4, 154

If then any one does not agree to take the risk, he may become of the assignee upon the consideration of the transfer, but he never can after a transfer, in by which the bill is assigned, for it is transferred by delivery. 7 Y. R. 65-6, 117, Laing 928, 906 Ch. 123, 131.

Hence it is, that a party transferring by delivery can be justified only by his immediate assignee. Laing, 928, Ch. 123, 131, 3 Bur. 1525, 1526, 1527, 1528.

4. The 4th rule is, that when one transfers a Bill, or a ^{particular sum} part thereof, a part debt, by delivery, the conveyance is liable unless the assignee to assume the Bill at his own risk and when one transfers a Bill by discount, the assignee cannot remain liable in any manner. This distinction is not a material one and it means evidently, that a transfer by a discount is a sale and free release of the debt, or Bill, whereas as there is no debt, there is no ground of responsibility.

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an action. for this transaction is like the purchase of any other
 debt, a Chattel, & this, suppose, the Transfer was by mere deli-
 very for if there was a bill or document, the evidence must
 be made here applies the maxim "Caveat emptor," 1 K. 757,
 1 E. 1044, Red 90-1, Ch 63-109, 123.

5. If the holder of a Bill Transfers by delivery, & so it is
 then sold of it on it comes into the hands of a bona fide
 holder for value, he may sue any of the prior parties, for so in is
 by the Ex Mercator's bond to enquire into the holder's and assign
 of a transfer, the funds or they can receive nothing. 1 W. 452,
 1576, 7 K. 427, 1 W. 611, 633, 1 Talk 126, 3 id. 41.
 This rule is, indeed, of a Bill Transferred by endorsement in the time
 of the law is not an endorsement from the holder to the assignee, but
 if however a lost bill is paid out of the usual course
 of business to the holder, the drawer may be compelled to
 pay it over again to the holder. Where when a Banker checks
 a bill & gives a good and paid to the holder before date it was
 held this was payment out of the usual course of business, &
 if payment is made before the bill becomes payable, -
 before the day in short will not discharge the drawer
 unless paid to the true owner. 1 Esp 40, 151, Ch 125, 151.

6. If a Bill is Transferred by endorsement and is transferred
 by a forged endorsement, this endorsement transfers no interest
 hence the true owner or original holder may sue
 as the prior parties, tho the party who has paid
 it under a forged endorsement the who pays money under
 a forged endorsement does so at his risk 6 W. 607, 4 id. 28
 1 W. 617, 637, Ch 125-6, 151.

7. If the drawer of a Bill whether accepted or not
 does it or delivers it to a wrong person, he cannot sue
 the party who has paid. Note, pay after at the time

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at the time the Bill was payable and of the same amt.

This is a Public Law. Beavon Plan 198. 271 Ch 128

8. This rule extends not to Inland Bills of Ex. But if he should refuse to deliver such Bill att'd. an Inland Bill yet the party has a remedy which I conceive to be a specific action on the case for negligence.

9. If the drawer of a Bill abroad after acceptance the holder may protest the Bill for better security if he chooses, and he must give notice to the prior parties. This rule however must refer to a Bill already accepted, for it would be obligatory to say he must take better security when he has had none. Ed Reg, 743. Beavon Plan 22-4-6-7-9. Ch 128-9.

10. The security is of course to be given by some third person who engages to pay the bill. This security, thus given is in the nature of a second acceptance for the honour of the first accepting acceptor.

11. If an indorser is subjected to an action by the holder to pay the bill. It does not appear very clearly whether in this second action he can recover costs on the action to which he was subjected. I conceive he cannot recover the costs in a Court as the Bill. It would be impossible for the person to recover a collateral price on a Court for a particular sum. In Peters B, Penn. 358. It is said and decided that on a general Court for damages, costs may be recovered. 2 Ph 60 2/2

Presentment for Payment

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1. It is a Gen Rule that the holder must present the bill at the time when the bill becomes payable. At the time when it becomes payable if this be a time appointed if ever within a reasonable time & whether accepted or not.
2 Pl 581, 2 Bur 669, Talk 127, Stru. 1087, 2 Blk C 470, KeD 120 125. Ch 130. 131, 202.
2. And if the holder does not thus present he loses all remedy against (against) the drawer and all the endorsers, for their conditional obligation is, that if the bill is dishonored they will become liable if he uses due diligence. 2 Bur 669, 4 Y. Pl 581-2. Bal et al. 182. Ch 130-1.
3. A former distinction was held. that when a bill was given for a joint debt presentment for payment was ^{not} necessary. But when it was given for a debt contracted at the time presentment was now necessary. 203, 408 Wm 284. Talk 124. KeD 171.
4. If the acceptor dies before the time of payment, & presentment must be made to his representatives if there are no representatives it must be made to his house. Melby B2 Ch 10. Lu 34. Ch 71 132-6.
5. But a neglect to present may be excused with the same reasons that dispense with presentment for acceptance, Ch 132, 3, 133 to 136. 202-3. The reasons are the same with those that dispense with notice in case of non-acceptance. But the acceptor having cannot depend on the ground of

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delay in presenting the Bill for payment. It can be no injury to him but rather an indulgence. *Day 235-97. Day v. Wall vs. Delister. 1 Esp. 1646.*

6. It has been said that an action will lie on the bill without ever presenting the Bill for payment, according to this. The acceptor must find out the holder & pay him 10 clod 38. *Baker 78 n B. 108 n.c. Ch 133.*

By the opening a presentment for acceptance is made. *Amel. Ch 133. Stea 222, arguer. do. 1 Saund 83.*

Now it is certain that in instruments not negotiable when money is payable, the debtor is bound to seek out the creditor and he must do this at his peril. Saying an action is tantamount to a demand. But in the case of Bills of Exchange I think presentment should be made. I succeed in all cases when a Negotiable note is given in all cases demand must be made, for it may be impossible for him to know who holds the Bill. The Law gives him no knowledge. If the person holding the Bill. I think therefore the latter opinion is correct.

7. If the acceptor engages to pay on demand or after demand presentment must be made in all cases *Ch 134 2 Thos 235.*

By and to whom the bill is made payable,

8. As by and to whom the Bill is to be made payable. I suppose it must be to the holder or his agent, 1 Esp. 115.

1. R. 167, 10 clod. 286. Peckham 16. 179, 180. Ch 134. The qualification given by Chibb is not satisfying. He says the acceptor must not pay the agent because the agent can give no authority.

But I think the Creditor is not bound to give a receipt to his debtor upon payment of the debt, and if so requiring a receipt would be an objection to the agent receiving Payment.

- 9 The presentment is to be made in gen to the drawee
himself but this is not universally so. for if there
is no place appointed it is sufficient to be made
at the acceptor's dwelling, & if there is a place appo-
inted at that place. 2 H Blk 509. 1 Esp R 512, 12 Mod.
241. Low Dig' Much^t F. y. 1 Esp R. 4.
- 10 If the place appointed is at the holder's house there
is no need of presentment or demand be cause the ac-
ceptor must then apply to the holder's house himself. It
is said the acceptor's house ^{holder's} is a demand.—
2 H Blk 509, Ch 135. But this I conceive can make no difference.
- 11 In a Common case if the acceptor has removed, also
added a copy the State between the drawing of the Bill &
presentment for payment, the rule as to presentment for payment
is the same as there for present for acceptance, Star 168 y,
Ld. Rep 734. 1 Esp R 511. 12 Ch 70. 136, Kid 1251-7.
- 12 But the, a presentment or demand upon the drawer is re-
serving to subject his parties yet no demand on
the drawer is necessary to subject an endorser,
and so with respect to a second endorser and his
first endorser. Now there is a privity of obligation
yet as between the holder & the drawer & endorser
their liability is coordinate, 2 Bar 669, Star 441, add Star 443
P. R. As to the holder on the one hand & drawer & endorser on the other
- Between a day of payment is mentioned in the Bill. pres-
entment for payment is not to be made gen^l on that
particular day. for there are days of Grace allowed &
presentment must be made on the last days of
grace 4 y. R. 170. Ch 143.

Days of Grace. Bills of Exchange

Days of Grace are usually so called, because they were formerly given, but now the holder may demand them 4 26, 151-2, 1 Cap. 16. 58, 261 Kid 9-10. 121-5.

14. When a Bill is payable at a given time then the presentment must be made on the last day of grace but when a Bill is payable at sight or demand, no day of grace are allowed as said by me. When a Bill is payable on Demand all the Eng. authorities say that days of grace are not allowed on those payable at sight. The authorities do not agree.

The reason given why such bills are payable immediately on sight & demand is that the advantage is peculiar to the holder who stands in immediate want of the amt. due, who stands in some emergency. Bourns Men 256, 1 Shaw 163, Kid 10, Barnard. 303, Ch 137, 146. Then relate to bills payable at sight & demand. It has been held in some of our States that all bills are payable with days of grace 1 John Cas 328, 2 Cas 343, 4 Dallas 147

15. The Number of days of grace is different according to the custom of different Countries, and this custom is determined at the place where the Bill is payable. The number allowed by the Eng. & our Law is three. Kid 9-10. Ch 130. But in some Countries six seven eight and even more are frequently allowed -

16. If a Bill is demand^{payable} at a certain time after date or after sight or at demand the day of date and the day of sight are excluded from the day of payment. As if a Bill is demand payable 10 days from sight or 10 days from date. The 10 days commence the day after sight or the day after date in the other,

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Ed Reg 280. 6 Y. R. 212. Beav's Plu. 250.

A Contrary can Postique. 376.

17. In the case of Instruments & contracts, not governed by Law Merchant, the rule is that when they are payable at many days from date, the day of the date is included

2 Vent 308-10, Cowp 714, Powell

on Powers 448. 3 Y. R. 623.

18. If a bill payable at a fixed time after date has no date, the time of completion is fixed from the issue of the Bill & is excluded. A Bill is drawn on the 1st of March, no date mentioned, payable in 10 days, the 1st of March is excluded, Ed Reg 1076 4 Y. R. 337, But Mr. Leach L. 1. Ch 43. 139.

19. If by the terms of a Bill it becomes payable on Monday, the time of payment is on Thursday. This is the course of years as allowed. Ch 140.-3. Hia 9-10. Beav's Plu 260.

In Eng^d this Country, Sundays & holidays are included in the time & hence if the last day of grace falls on Sunday or the 1st of Whitsunday or Christmas, the Bill must be presented on Saturday in the one instance and on the eve before Christmas in the other, This rule is adopted by

even the Law allows no temporary business on Sunday,

Ann 829 Hia 120. Ed Reg 743. Ch 14

20. But except when the Bill is payable on Sunday or on Whitsunday or Christmas, any presentation before the third day of grace has no effect and is no presentment.

1 Ed. 261. Ch 141

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21. Bills are generally drawn at one two or more months, and the length of an usance is different in different countries. If a Bill is drawn in London a thousand the Dutch usance governs. Kid 4. Ch 141.

22. If a Bill is payable by months or month, the computation is by calendar months. But as to common law months chosen in action the time is ascertained by Lunar months as in the case of a lease. But by the Exchequer month means a calendar month. Bacon Plea 253. Kid 6. Ch 143. Rule of Common Law 2 East 333. 6 Y.R. 224. 2 Blk 141.

23. If a Bill is payable at a fixed period after sight the time is fixed from the day of acceptance and the presentment for acceptance, but that day is excluded. Com. Dig. Merch. H. 7. 6 Y.R. 212.

24. The day of presentment being ascertained, the presentment must be made within a reasonable time upon the expiration of the day and in the hours of doing business. This refers ~~not~~ to time of payment but to presentment for payment. If a Bank closes at 4 o'clock P.M. presentment after that time has no effect. Kid 125 Ch 148. 69.

To whom payment must be made.

25. Payment is generally made only to the owner of the Bill or his agent. If therefore after the payer has negotiated the Bill payment is made to the Payee. The acceptor will be bound to pay it over to the last holder. Ch 149.

Time of Day.

26. As to the time of day, it is laid down on a general rule

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That when the Bill is payable on a day certain, the acceptor is not bound to pay till the last moment of the day. 1 Linds 287, 4 Y.R. 173, Ch 153.

But this rule cannot hold as to G. Bills for the holder clearly requires that in case of G. Bill a Protest must be made on the day and notice must be sent on that day. As to G. Bills the Holder may insist on payment within such a time as will enable him to make Protest and give notice to the prior parties on that day, which must be within the time here given 4 Y.R. 174, Kid 121 Ch 96-7, 153.

But in the case of S. Bills as there is no Protest it seems that the acceptor is indulged in delaying till the last moment of the day in making pay. This opinion is doubtless even contradicted, the most we find on this subject is text Linds, Ch 147, 153, 162 4 Y.R. 170 Buller 67, Contra Kid 121, 4 Y.R. 174.

It is one of the clearest rules of Law Tender, that the debtor must tender within the most convenient time of the day, i.e. just before dark. How can this rule be reconciled with that, the prior rule relating to the acceptor. This rule of tender contains no exception with respect to an acceptor. The only mode in which I can reconcile these is to suppose ^{that} the Law of tender does not extend to S. Bills. That I believe for an exception, as far as my power I cannot satisfactorily reconcile this rule,

27. If the Holder can hand over the acceptor without the assent of the prior parties, they are discharged for if the holder is discharged then can the prior parties be discharged.

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Cook & Bush Lm 160 Ch 183 & 155

28. But by receiving a dividend from the acceptor his receiving a Bankrupt does not discharge the prior parties, for the holder receives all he gets in such.
29. It has been said that if the holder receives from the acceptor a less sum than is due, only as a part of the debt, and does not give notice to the prior parties, the prior parties are discharged. I can see no reason for this rule, see Ld R. 744. for the rule Ld R. 745. Bulst. 273. Contra to the rule, 271 of Bulst. 273. 275. Ch 160. 156-7. 133.
30. It is said in some of our Books take a doubtful point whether the acceptor a party bound to pay can insist on a receipt as a condition of payment. If he can insist on this, he may make a condition's tender and such a tender would be a good defence. But I conceive there is no rule of law to be found in any Book requiring the Creditor to give a receipt, the Debtor must furnish him with sufficient evidence, a receiptable creditor would undoubtedly give a receipt. But he cannot be compelled Ch. 157. 134. Ld R. 742. Peake R. 180.
- That the Debtor cannot insist on a receipt, 211 R. 31. Peake R. 79. 80. Fortescue 145

31. A general receipt endorsed upon the Bill not naming that it was made by the payor. It is prima facie evidence that it was made by the acceptor. As much an endorsement furnishes such evidence. It is correct that the endorser a drawer should take a receipt

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in their own names. Statute R. 25. Ch 157-8. 209.

32. If payment is refused the holder must in general give notice to any of the prior parties to whom he intends to resort, where it is dishonored by non-acceptance & non-payment. Yet in the District Ct of N.Y. I find lately, the Judge of P. Courts says that there is no need of notice to the holder to the prior parties in case of non-payment, rule as just cited above Ch 158, 202, 160. 4 Y.R. 174. Stea 829. The Decree of N.Y. 1st N. Y. Law Journal page 11, by Judge Vanest. Tho we do not find this point certainly decided yet we take it for granted according to the English authorities. There is no particular decision as to this point. 1 Y.R. 174. Ch 95 to 97. 162. See Ray 748. Stea 829. 2 H Blk 565. 1 Y.R. 168. Kid 126.

33. But in the case of J. Bills when payment is refused it seems that notice must be given as of course within the day following. See R. 25. Statute that will must be given 1 Y.R. 170. & 168-9.

This is rule of J. Bills, provided there is a regular exchange on the day following and if not the prior parties must be dishonored 1 Y.R. 168-9. Dory 515. 2 H Blk 565.

Payment Supra Protest, &c

1. When a Bill Receivable is dishonored by non-payment Payment Supra Protest, may be made for the honor of any prior party, and this rule is laid down in reference to J. L. Bills. Bencour 456. Kid 152. Ch 103. 103. 115.

2. This rule has heretofore given me some encouragement, & as I have before shown that inland Bills, need not be protested

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for non acceptance. This is an established rule of law, How then can we reconcile this with the rule requiring, Super Protest for non payment, in case of Inland Bills as well as Foreign Bills.

I conceive the solution to be this. When a Protest is made, the law is not necessary to enable the holder to recover of the parties, but for the benefit of the party paying, where the bill is dishonoured by non payment, the law may recover of the party to whom the bill is paid. This is the only possible way in which I can reconcile these rules.

When the drawer has made a simple acceptance he is not allowed afterwards to pay for the honor of the endorser so as to bind him, because he has bound himself by his simple acceptance & it must be so. He cannot change his signature. But if the drawer has no effects of the drawee he may even after a simple acceptance, pay for the honor of the drawer and this requires a notice to the drawer. There is the reason of this distinction, viz. that the drawer has always a right between the drawer & himself & never that he had no effects of the drawer, but as to the endorser, the drawer has no effects. It can make no difference with him, Kid 153. Ch 163-4, 165, 122, 1 Esp R. 113, 1 Q. B. 269, Baines 458. Kid 155.

4. In case payment for the honor of another should not be made until after the Protest made for non payment for the bill is foreign, without the Bill being Protested can he have no right to recover on the Bill from any of the prior parties his payment before Protest for he treats by making afterwards an indorsement.

But if the drawer has no effects of the drawer and
 on from this negative. That he gives without this
 previous Protest. yet he may seem in an act of
 apportion for money run out and expended. He may
 answer on a general Count. but not on a Specie
 Bence Mo 53 Ch 163 191. 203-5.

Head 153-5. 6.

But if the acceptor for the honor of the drawer
 indorse has all from either of them their appro-
 vation of the acceptance. Then the acceptor may re-
 -ly pay. without Protest for non payment. by ac-
 -cepting for the Honor of the drawer and indorse. There is
 no receipt of the drawer a indorse being indorsed
 to the acceptor but rather the contrary. But where he receives
 the approbation of the drawer a indorse. they cannot
 be maintained to him. Head 154 Bence 458. Ch 164.

And as a Stamp may accept for the Honor of a
 party and so he may pay. & by this payment
 he acquires a right against all prior parties. Ch 164.
 Head 153. Carth 124. 13. 269. Bence 457. And under
 the head of acceptance, rules relating to the acceptance
 by a Stamp. which apply here.

"The rules applicable to Bills of Exchange are generally
 as to promissory Notes

Promissory Notes

1. A Promissory note is a direct promise or engagement in writing to pay a certain sum of money to the person, or his order or to Bearer.
And this instrument is in the nature of a B of Ex drawn by the maker upon himself, it is in substance the same thing. 2 Blk 467 Kid. 18. 35. Ch 165.
2. But such a note tho' expressed to be payable to order or to bearer is at Com Law not negotiable, indeed at Com Law what are promissory notes were not deemed instruments but were regarded as mere evidence of parole contracts. Kid 18. Ch 165-6, Salk 129, 3 Bur 1520. 4 Y.R. 151.
3. But such instruments were made negotiable and put on the same footing with inland Bills of Exchange by the Stat. 3 & 4th Actum in aid perpetuum to H. 1st item. This Stat in Eng^d is considered as the origin of promissory notes as to the negotiability. In this State no negotiable note existed untill the year 1812. Which makes notes negotiable over \$35. Kid 19 and onward Ch 167 to 169. This Stat in its terms declares, that promissory notes as inland Bills of exchange are, hence the rules applicable to the one is gen^{lly} applicable to the other.
4. It was formerly questioned whether Promissory Notes were entitled to days of grace in this State. But it is now settled that they are, entitled to days of grace 4 Y.R. 152, Bal 271, Doug 61. to 63. Ward vs Honeywood, 1 Y.R. 167, 1 Com R 329, 2 id. Norton vs Lewis.

7. A promissory note when endorsed in effect becomes a Bill of Ex. The endorser then stands in the stead of the drawer. This is substantially a bill of Ex drawn by the endorser upon the promisor. The promisor by making it is considered as accepting it. See 676. Hill 34-5. Ch 121. 170. 184-8.

Mean it is said that a prom. note may be converted as a Bill of Ex. I do not mean that he must thus declare. he may declare as upon a prom. note 446 149. 6 Mod 29-30. Ld Ray 143. 1 Salk 182. 3.

8. Bankers Cash Notes are only a species of promissory notes given by Bankers and they have all the qualities of any other promissory notes. See 415. 550. 1 Salk 283. Ch 170-1.

Bank Notes owe their existence to the Statutes incorporating Banks. In Eng? the Statute 5 17th Jellens 809. 1710 3. gave, & established the Bank of Eng? Before this State of 1710, Banks were unknown in Eng?.

9. There are almost universally for money and pay all on demand, now for the purpose of subjecting of the Bank to the payment of the Bill. These Bank Notes are treated as securities. They are then Bills called Postbills. Now in the common dealing between merchants at long then Bank notes are treated as cash. and if the owner of any sum bequeaths all his money. Bank notes are treated as cash 1 Brn 457. 3 id 5. 3 Salk 554. 6 id 335-

10. It may be said of Prom notes as of B of Ex that too technical form of word is necessary to make a Prom note

Bills & Promissory Notes.

1. It is sufficient if it be payable at all events, in money to a certain person & it is a promissory Note. Hence when one gives his promise to account with another for a certain liquidated sum, it was held a promissory note. 5 Allen 362, Tre 629, 186, La Ray 1396 2 alk 32

10 But the mere acknowledgment of a debt, without an amount set in some form to a promise is not considered as a promissory note. The word "I am indebted, to you," is not a promissory note. In Reg. it has been decided that "I. O. U. a certain sum of \$50," is not considered as a promissory note, but is a mere acknowledgment and it is good evidence of a debt in an action of assumpsit. 1 Esp R. 426, Ch 113. But there are some cases in Reg. the "common money acknowledgment."

11. The essential requisites of a Promissory Note are the same as those of a Bill of Exchange. The Note in its terms must be payable at all events & 2nd It must be payable in money and in money alone. A promise then to deliver specific articles is not a promissory note. 5 H.R. 486. 4 Allen 242, 1 Bur 323, 4 T.R. 149, 7 id 242, 433. Bul N.P. 272.

12 A written promise then which has not these two requisites is not a promissory note. It is said however, that a writing not complying with the requisites may be decided on as a promissory note as between the parties. 7 H.R. 243, Ch 33, 48.

Remedy on a Bill of Exchange.

1. The most usual action lies on Pleas of Assumpsit and Bofe is Assumpsit & indeed this is said to be the only remedy on the Bill when there is no immediate privity in the suit, as between the indorsee and Maker it is said Assumpsit must lie the action. Now it is agreed that assumpsit lies in favour of the payee or the drawer because there is an immediate privity. 179.
2. The holder may in general maintain this action as all the prior parties severally. But he cannot join them in one action for their undebting, are an all several, by the prior parties. 181. When persons whose names appear on the Bill tho. the bill has passed thro a number of hands & is ultimately delivered, the party stamping cannot be considered as prior parties unless their name appear on the Bill. 4 Y.R. 471 Ch 179.
3. This action lies by the payee against the acceptor & the drawer. for an indorser it lies against the acceptor the drawer & the indorser and see 7 Y.R. 64, 12 Mod 244, 418. 15 East 7. The Assumpsit on a Bill by bearer delivg cannot be maintained ^{and} on the Bill against the party who delivered it. because his name is not on the Bill. but he may maintain an action upon the consideration

4 But he may maintain an action on the part of who
 are in the Bill is used.

5. He too the action may lie on the acceptance by the
 drawer. Mr Chitty says an action will lie by
 the drawer or the drawee on his refusal to cash
 when this is impossible. Ch 180. A drawee is never
 obliged to accept unless under a previous promise.

6 In general any party having been wrongfully
 to his bill may maintain this action against
 any person party (for whom see) 7 M.P. 571 Ch 180.

7a But it seems that an action will not lie against
 any party who becomes a party after the holder
 himself. Suppose if the payee endorses the Bill
 to B. & B endorses it to A. A cannot recover if A
 the act of B makes the parties even. If A was allowed
 to bring the action it would be multiplying actions
 4 M.P. 470. Ch 181. Consideration.

8. But an action will not lie unless the party from whom
 the bill immediately received the instrument unless
 that P. gave a valuable consideration for it to
 the other, as between the parties giving the bill
 may also a want of consideration, for there is
 no fraud upon a third person. If A endorses
 the Bill to B, and B gives A, the latter may sue
 the want of consideration. The want of consideration
 between parties may be shown even if the agreement
 was executed.

7 M.P. 121. 350. 571. 1 B & P. 651 Gray
 514. 1 M.P. 185. Mid 155 Ch. 9. 51. 82. 181. Central Bk 446.
 In Cases Rep. you will find it questioned.

9. When the sum principal is between the parties in immediate priority the P^r can secure no sum than he advanced. 4 Johns 361. 2 Phil Co. 22. 13 Johns 52. 15 id 44.

10 The holder of the Bill may at the same time commence an action vs all the prior parties. But if he obtains full satisfaction in one of them actions the Def^s in the other actions are discharged as to all liability except the costs, for the suit is rightly commenced. There can be then but one satisfaction. 3 Mow 86. 4 Y.R. 691. Kid 112. 116. 198. 1 Mil. 46.

And when there are several parties or several parties if the drawer a def in one of them pays the amt due and the costs accrued proceedings are stayd?

11 This rule does not obtain in favor of the acceptor. If the m^r is lost as the acceptor another is indorse another is the drawer. If the question in this case hangs the am^r & cost^s ^{if the am^r is not so large as the cost} yet the proceedings will not be stayd until he pays the costs in all the other suits 4 Y.R. 691. Stee 515. Ch 193. An opinion is that rule may be per. 9. 2 Phil Co. 749. Kid 148. But the late decision of 4 Y.R. 691. overrules all, prior decisions.

12. The holder having second sight at the several prior parties, may have an Execution vs the sum of each and all of them. he may commit them all at the same time. But he can have but one fieri facias pays the rule But it means he can have only one fieri facias at a time, if fieri facias issues vs the goods of a debtor none is returned on one, another fieri facias may issue Stee 515 Ch 183.

Bills and Notes.

The essence of this rule is that the committing of a person is introduced in consideration means its payment but goods taken are quasi payment, and therefore not, one piece of evidence can give.

Pleadings in Bills of Ex. & Prom. Notes.

- My remarks will be here on the subject of pleading in this title.
1. The action may be either founded in general terms on the Bill itself or on the consideration of it. It is that the holder may treat an action on the Bill, as well as a special count stating the engagement, as being one on the consideration, stating the subject of the consideration. The usual custom is to insert different counts, stating first upon the Bill specially and then inserting count for the consideration, stating the subject of the consideration, as per report of old cases and 3 JR 174 3 Bul 1516. 1 Bur 323. 5 Co 2611. Ch 184. 233 to 248. Hia 58. 177. 197. Term of decision, Ch 184. It has now become the custom, even of Pleas to insert a number of different count, special & general counts. ^{It was formerly the custom}
 2. I declare upon the Bill, to allege the custom of the Bill. The custom is now generally counted upon, but there is necessity, nor more way of reciting the custom. The custom is of Com Law, extending over the realm and therefore need not be cited Sed Reg 88. 175-1542, Carth 83. 267. 270. 3d ed 226.
 3. In all the Big forms in declaring upon promising etc. It has been customary to state that the debt, became due by the Stat 314 statute. It always appeared unto me as wholly unnecessary to do this Ch 185 246.
 4. In a Court where the Bill itself it is not necessary to allege

a consideration but in all the common Courts
there must be a consideration stated. Ch 51, 115-16.
9. 185. 1 P. & R. 487. 2 id 445.

Each declaring upon the Bill the P. & R. need never
plead a promise and of course no offer can be dem-
anded 4. M. & R. 338. 1 H. & C. 386. Yet a copy may be given
in Court Ch 185 and the Court will require a copy.

6 And the instrument must always be declared upon
according to its legal effect and not superficially
according to its phraseology. It must be declar-
ed upon according to its legal operation, take the
example of a Bill payable to a petitioner's person, in
which case he should count upon it as a Bill payable
to bearer, 3 M. & R. 178, 232, 335, 481, 643, 1 H. & C. 318, 564,
2 id 194, 288

7 It may also be noted that in declaring a Bill of exchange
or the answer it is not indispensable that it should be stated
that he promised to pay. The drawing of a Bill says "I have"
is equivalent to a promise. I promise - Lawyers at
the present day would not run the risk of saying it was
The rule I conceive to be incorrect.

Carth 507, Tulk 128, Edw 558.

Kid 146 Ch 186-7, 236.

8 In an action on the answer a defence the P. & R. must
generally allege presentment for acceptance & presentment
present for payment. Where the circumstances require
presentment, he must so state it. He must state
the mode of the dishonour & finally he must aver
that action was given in circumstances showing that
no action is necessary. There must be alleged with
respect to the Bill Draw, Banker is Absence, 5 Nov 2670. P. & R. 712

Bills and Notes.

9. On the Common Count the instrument itself may be admitted as evidence as between some parties, of the indebtedness and therefore as evidence of an implied promise. The rule is this, as between parties in immediate privity the instrument is admissible as evidence of indebtedness. *Howe 725, 1 How Blk 602, 18 189, 192, 193.*

10. On the Money a given count, the P^l may enter also into evidence of the consideration and thus prove the validity by parol evidence. The fact of the P^l holding the Bill does not prevent his going into evidence for the purpose of supporting the money counts. But as to the Bill, there is necessity of exhibiting proof to support the consideration unless for the purpose of rebutting evidence of the debt advanced for the purpose of proving an indebtedness, *3 L.R. 174, 4 ib 240, 1 How 58, 18 4p. 245. But cf. 12 137, 18 719.*

11. It has been a question how far the Bill is prima facie evidence of money paid and received by the drawer of the Bill of the Bill. I suppose there is no difficulty in saying that the Bill is prima facie evidence of money paid and received of the payee, *Talk 283, 3 Blk 1510, Ch 191.*

12. However when the P^l is not in immediate privity with the debt he should rely upon a special Count on the Bill. The Bill is evidence prima facie of money paid and received of the payee by the drawer to the use of the person to whom the drawer should owe it to be paid. I shall omit evidence

Form of the Action in Bills of Ex.

1. Assumpsit is the most usual form. But I conceive that the action of the debt, may be best in many cases. The action of debt was formerly introduced by reason of wages of Labor, & 2^d by the necessity of recovering the exact amount laid in the declaration - 3 BkR 155. 341-3. 2 BkR 1221, Doy. 6; 703 - 2 H BkR 249. 550.

But the action of Debt on this Continent having lately been revived in the Courts of New York. Mr. Chitt's says, It is now the common form, but from recent reports I do not think it frequent and common. This is a proper form of ac between the parties in immediate priority, as there in these cases the Holder has his election either to bring Assumpsit or debt. - 1 BtP 249. Cl 219.

It has been held however that debt will not lie on a Bill of Ex. by the Payer or the acceptor, & if this is true it must follow that Assumpsit for money had & rec^d. will not lie, the bills being no evidence. This seems to conflict with a former rule, that the payer cannot sue on debt and 1 Wils. 85. Haid 485.

There seems again is that there is no privity, no immediate relation, existing between those parties. The payer the may recover on the Bill of the drawee. It seems to me that the acceptance implies a promise to pay, & the acceptor, the debt, to the holder.

In answer to this I have to show, that the Bill is an assign^{mt} to the payer of the debt due from the drawee to the drawer, and therefore I think that debt Ld Reg 88. Cl 290. will lie by the payer or the acceptor.

Bills and Promissory Notes.

a receiv. is signed of another nature, which I deem
belucious. The receiv. is That the claim is collect-
ed on the receipt.

The presumption of the law is that the receipt is
the original debt. He is principally liable. His li-
-bility is absolute, that of the other (A) conditional.

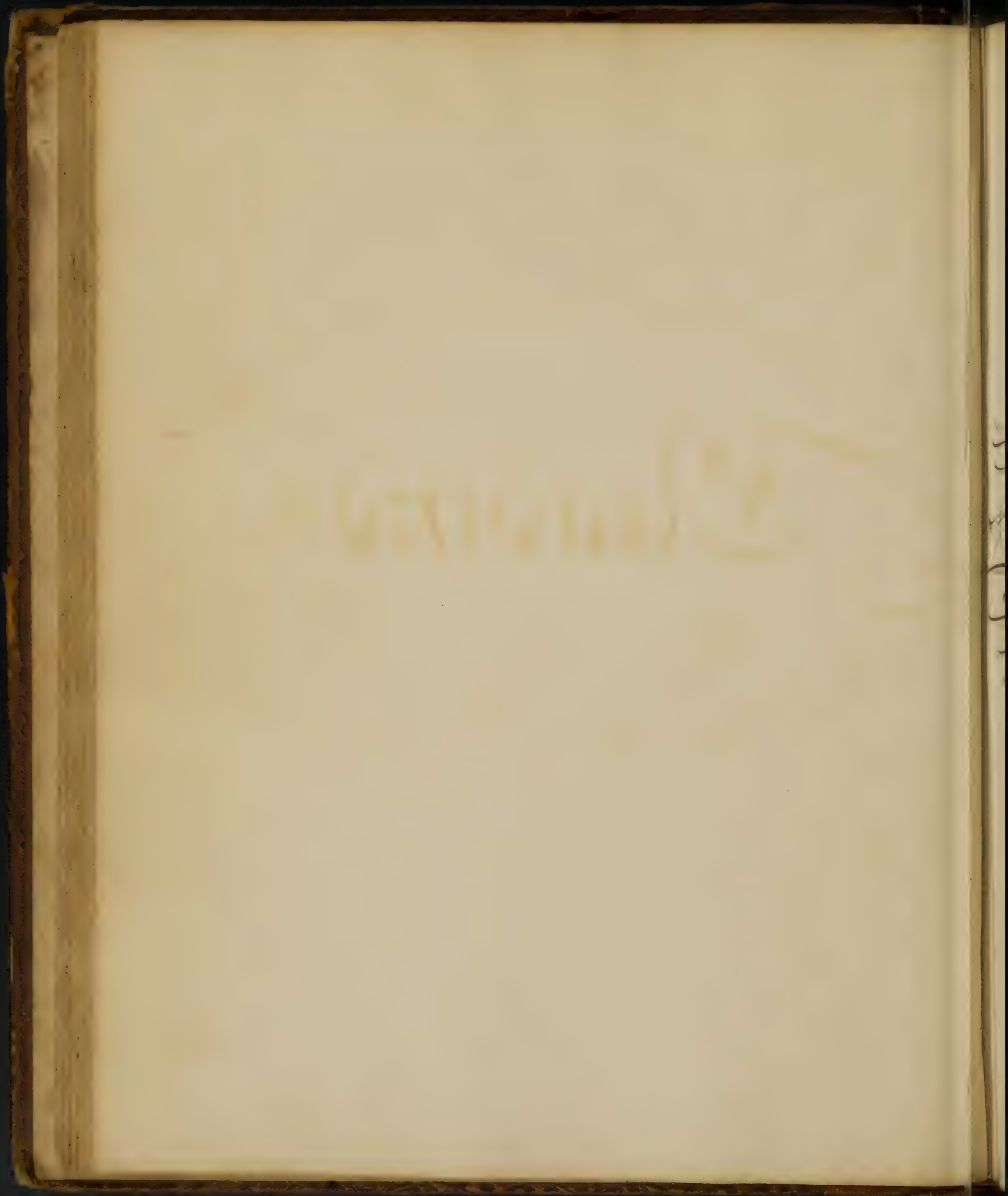
End of Bills of Exchange.

Notes

- (a) I drew a B of £ to a B. requesting B. one month from date, to pay
to C £10 as his quarterly help pay. The Bill was accepted and
an order to pay sent & afterwards denied by the Supreme
Ct of Ohio, to pay it. The Ct held, this bill was drawn on the
particular credit of the drawer not on that of the pay.
for it was to be paid as soon as the credit began whether that
should ever become due or not & the mention of the quarterly
help pay, was only a direction how the drawer might receive
himself

End of Bills of Exchange.

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Pleadings

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Pleadings

By R. S. S. S.

This I conceive to be the most important title on which I treat,

1. Pleadings in civil actions are defined to be the mutual allegations of the parties in a suit put in writing and set down in legal form.

It is now a part of the definition that they be in writing. In the ancient law when all pleadings were delivered viva voce, and a memorandum taken of them, thence they were called parol 3 Blk 293. 10 C. 132.

The Pleadings from the time of the Conquest to the reign of Edw. III were in Norman ^{French}, from Edw. III to the time of the Com.wealth they were in Latin, from thence till now in Commonwealth times they were in Eng^l, from the restoration 1660 till 4 Geo. II in Latin, since that time they have been in English.

3 Blk 317 to 324. Lawes 23. 9.

The allegations consist of the adverse allegations of the parties in the suit.

And in structure, the pleadings consist of such parts as setting out the ground of claim on the one ^{side}, and the ground

Pleadings.

reference on the other.

24 R. 159. Day 278. 4 Bac. 1.

2. It will be found that throughout all the stages of pleading, to be a syllogistic process. Hence it is "sup. Lo Mensur." "that the ^{the} instantane ^{is} ^{is} founded in logic" 1 Bac 319

When I say all pleadings are syllogistic. I mean that every good declaration and species ^{plea} is substantiated a good syllogism ^{completely} not substantiating but eliciting.

In the first given claim of plea, show that declaration is? The Def. has already entered on my land therefore the def. has a right by law to it. This is reduced to a syllogistic system. Against the def. I have a right to recover damages. The plea is substantiating the use in scholastic form a good syllogism. at least all the elements of a syllogism. 3 Blk Com 386.

3. The Magna propositio is not usually expressed, in form and need not be. As it was formerly the rule in pleading against Impleaders Common Carriers &c on the custom of the realm. In actions on Bill of Exchequer solemnly expressed Magna propositio in plea. But that is not now the general rule, for the Judges are supposed to know it. But particular customs & private statutes must be pleaded specially their existence being matters of fact like any other document & tried by an issue in fact. 2 Ch Plea 271. 4. Ch B 184. 5. 234 La Ry 88. 175. 21

The Magna propositio then enters the legal principle, & when the Def. relies.

4. The Magna propositio contains the part to which that principle is to be applied in the particular case.
5. The conclusion is an inference of Law from the principles & facts.

Major and Minor propositions.

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The application of the principle to the facts alleged.

The rules of pleading are not founded upon arbitrary rules, but scientific principles.

The Major proposition is denied by defendant and that defendant is a denial of this Major proposition. During the Major propⁿ becomes an issue in law.

The Minor Proposition is to be denied by a general fact, I.E. by a general special fact.

But the conclusion can be arrived at by the matter alleged. If the Dft finds the legal principle and matter of fact to be correct he cannot deny them in his conclusion by an matter of issue. But a defence in this case must consist of new matter of defence which comes out in a specific plea, amounting to a new syllogism.

The plea of a Tologistical form of a reason is this.
"But the Dft has held it in the totality of the facts of the case to be correct as appears from the facts."
If the Dft would deny the 1st he must deny, the 2^d he must traverse, and if he can neither deny nor traverse, plaintiff must go against him, unless he concludes with some new matter. Thus we will find all pleadings syllogistical. The object of pleading is to simplify and reduce to one ground the matter of controversy, I.E. to make the Prop claim and Dft's defence depend as far as possible on some one single ground of point of Law or fact. —

Pleadings.

The first stage of a suit is the Writ.

1. which is a mandamus writ directed to the Sheriff or other proper officer issued to compel the appearance of the Defendant to the suit & to commence at the proper time of the writ.

For almost all purposes this is the case - 3 Blk 278. 285. Case 454. 11th 14th. 7th 16th. 4th 18th. 156. 1st 28th. 8th 28th. 843. 1st 176. When the writ has a fiction. as it is almost always the case in England. For the purpose of Justice. The true date may be proved.

With us and in some of the other States the writ and declaration goes together. But in all cases the Cause of action must exist at the time of the issuing of the writ 2 Co 24-5. 2 Saunders 347. 1 Root 436. 8 Co 44-5. 4 Blk 120.

1 Step of pleading is the declaration. The term plea in Latin is called placitum and this term is frequently used in common collection, including all pleas. 3 Blk 291. 1 Saunders 338. 5. 4 Blk 180. introduction of 1st 1-6. Lamer 15. The writ is no part of the pleading. The writ is not the act of the party or either side. It comes into existence at the direction of a Plea.

- 2 The pleading follows the declaration, and consists of those allegations which the Defendant makes by way of defence to the other side. Those which the Plaintiff makes by way of substantiation he calls a plea. 4 Blk 1-6. Lamer 1-2. The 1st pleading which follows the count is the Plea.

The usual plea is a plea in denial. The answer may either go to attack the declaration 3 Blk 299 301.

Division of Pleas.

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The possible pleas on the part of the Def^r are of two kinds
1st Dilatory pleas. 2^d Pleas in bar or recumbent pleas.

Dilatory pleas are such as tend to deny the Pl^{ff}'s remedy
by questioning the mode in which that remedy is sought,
by denying the right of action or right of recovery for this
rule applies to Pleas in Bar.

But when the Def^r's object is to assert the particular point
and not to deny the Pl^{ff}'s right to recover in any action the
Plea is dilatory. These dilatory pleas are again divided into
three kinds. La. Coke and others divide them into six or
seven kinds. But I think Blackstone's simplification is the best.
They are divided as follows.

--- 1st Pleas to the Jurisdiction of the Ct.

--- 2^d Pleas to the disability of the Pl^{ff}

--- 3^d Pleas in Abatement strictly so called.

This division is sufficient to give a knowledge correct.

3 Black. 301. 1 Sid 572.

All dilatory pleas are frequently called pleas in Abatement
as contradicting what is said of Pleas in Bar. I even Regal writes
often give the name of dilatory pleas to all pleas in Abate-
ment 3 Blk 302. Lawes 37.

2^d Pleas to the Action are answers to the merits of the suit. They
always deny the right of action or recovery
and the cause of action may be denied by pleading in
one of 3 ways. 1st By denying the allegations as the Def^r
2^d By confessing and avoiding them, or 3^d By plea-
ding matter of estoppel. Matter of estoppel neither denies
nor confesses them. One Blacker has mentioned but 2 kinds of Pleas.

3 Blk 303 305. o Lawes 37 8-115-30-40.

Pleadings

There is another mode of denying without pleading:

The plea by which the cause of action may be denied is 1st General issue & 2^d A Special plea in Bar. There is a general issue & a special plea. 3 Blk 304.

There are then but two species of plea to the action. But the cause of action may be denied without pleading by Demurrer & Motion in arrest of Judgment. A demurrer is now strictly regarded as a plea, for it denies in fact and alleges in law. It seems to be an excuse for not pleading. The form of a demurrer is as follows: That the declaration of the Plaintiff and the matters therein contained are insufficient in law, because the Defendant is not in strict law bound to plead to the action.

There is another reason why. That a demurrer may be taken on to any part of the pleading in any of their stages. Co Litt 12. a. 5 Illus 132. 4 Bar 129. a.

I proceed to lay down certain miscellaneous rules applying to certain general principles -

In the 1st place in every plea the old indispensable requisites 1st That the facts alleged be sufficient in law & 2^d That the matter be expressed according to the forms of law. The omission of either is a fault in pleading, and good cause of demurrer. The omission of the 1st is good cause of general demurrer & the 2^d good cause of Special demurrer. Hilt 164 Coupl 68 de Bar abt plea Intro. ad initiation

1. It follows as a general rule that it is only necessary to state matters of fact, and on the other may be ^{the} conclusions from them. It is necessary only to allege facts as they exist by fiction and presumption of Law. The precise point towards which I am coming is this ^{rule}, to allege facts as contradicted from matter of Law. Dory 159, 5 T.R. 70. The Judges are supposed to be cognizant of all matters of Law.

I declare upon a wife's promise. The promise is a mere fiction, but as there is an indebtedness, the is presumed a promise. When the Plff alleges the debt indebtedness, he alleges the fact, when he states the wife's promise. It is a conclusion from these facts.

2. It is indispensable that the pleader alleges some fact, alleging a mere evidence of a fact is not good pleading. It is insufficient. Thus, where from facts the Law implies a promise. It is not sufficient to allege an evidence of this promise, but a promise must be alleged. In Grove, a demand & refusal an evidence of a conversion. But if the Plff alleges the demand & refusal without the conversion, it is only evidence and is insufficient 1 Lev 164 Cro E. 913, 2 Salk 663. 2 Salk 1579, Cro. Jac 383, 10th P. 1967 275.

There is a single instance in which the Plff is allowed to plead and not allege the promise, viz. In declaring on a promissory note, as the maker is an a Bille, and not allege the promise of the drawer. But I conclude that there ought to be a promise alleged in strict principle of Law. It is said by almost all authors that the drawing of a Bille is a promise by the drawer to pay. I conceive that is a promise only on condition of the Bille being dishonoured.

Pleadings

1 Galh 128. 1 Led Ky 538. Kid 13. 140. 1 Ste 224. 2 N. B. 63.
4 Mass 451

The above is a single exception to the gen rule.

3. It is a gen rule that every plea be direct and not argumentative, as alleging by way of inference a fact by recital. The material facts must be stated directly. When no direct issue can be taken, then must be a direct affirmative and a direct negative. This is required for certainty. 120y to enable the party to decide upon the allegations. Co Lit 303. Nov 128. Bar ab Pleas B. 4. Lawr. 69. 134.
But it is settled that the words, "whereas," "altho," "for this," "that," are severely, especially direct, to introduce the allegation of any material fact. So the word, "whereas," in the 1st word alone in respect to the 2nd he seems to say the 1st word, "whereas," has this character. 2 Ben 278. 1 Saund 117. Miller 144. 120y 144. Co Dec. 383.

4. In Gen all material facts must be alleged with time & place, the time when, & place when, said deed, verue. The time is inserted for the sake of certainty &c. for showing that the fact complained of was committed before the writ issued, and it is desirable to lay the time as near as possible.

The reason why the Pleas should state the (particular) time & place directly, every material fact put in issue must have been tried by the jury upon the very evidence & will. This rule is not now in use but a County is now allowed and is necessary. When the action is a Harbors action. The one place may be alleged in the declaration and another come out in proof, tho, a place is alleged.

Yet the particular place is not material; The place may be laid here when the transgression occurs in a foreign Country.

But still to give the jury the right of trying, The place where the act might have been committed, must be laid at some place within the County where the cause is tried.

Thus "The deft at Boston. State of Mass. to wit at Litchfield in the County of Litchfield. doth &c." &c.
 Can Dig Mead C.P.C. Co.
 Inc. 183. Civ. 85.

5. Each party in pleading admits, so much of his adversary's allegations which he does not deny. If he admits of so much of the opposite party's allegations, as he does not deny. This best definition I conclude the best. If he admits a right to deny he does not, it is fairly implied that he tacitly admits it. See etc. Mead's Administration, L. 3.

6. Each party's pleading is to be construed most strongly as himself. If there is any ambiguity it is his fault he should not be allowed to collect the opposite party by casting ambiguities upon him. & If he does, it is at his peril. Hob 234, Co. Lit. Litch 186, Lanes 52.

7. When a plea is alleged to be way of local description and not by way of venue. The party is confined to the proof of the plea is laid in the declaration. If the party alleges a promise on a particular day a promise before the day or after the day is sufficient in proof.

But if he alleges that an assault & battery was committed in the House of B. it is his own chamber and fails if he

Pleadings

ing it as said in the declaration he falls, for by alleging this in the declaration it becomes a mere averment, and he is compelled, to his declaration, in proof

2 Cas 497, 11 d 226. + 7 B. 261.

1 McCull 501-3-7. 2 Hawk 46 Chas. Keeling 15

This distinction holds as well as to mere averment as civil

8. In alleging the number generally a plea is not required on the Pleader to allege, specially except. Then there is a variance between the facts as stated and those that appear in proof as on any deed or instrument, declared upon now to give a variance is not predicate of a total bar. The Pff. may declare that the Debt. has converted 100 lbs of flour & if he can prove that the Debt. converted 10. or even one he can recover, for there is no variance. But if the Pff. should declare a written instrument and the proof should differ from the terms or tenor of the contract as in the instrument, it would be fatal, for in declaring on written deed or instrument the proof is confined to the doc^{ment}.

9. Surplusage never vitiates the pleadings. The maxim is: "utile in inutile non vitiat." Repugnancy in pleadings is a further pleading. In a material point it is a plea in substance, it is fatal, and cannot be cured by verdict, when it is repugnancy in circumstances, ^{posit. it} is fatal, only in the form of pleadings. It can be cured only by verdict. Now any immaterial repugnancy however trifling the good after verdict, yet if specially demanded to would prove fatal.

2 B. 333 2 Cas 63-4-170

30 L. 303. 4 Co 42.

Miscellaneous Rules.

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- 10 It is a general rule that every thing should be pleaded according to its legal operation. That it should only from the form, the language & structure be. If a Recorder covenants to never sue his debtor, shall a covenant should be pleaded as a release. The Examples are numerous. If a Boy & is deemed perpetual to a father's house or older, the Plea must be entered upon or his wife the same, for when it takes effect it operates as a Plea perpetual to become, Co Lit 193. b. 200 b. Corp 599. Dory 642. 1 G. R. 446. 1 Hen Blk 313. 2 id. 11. 3 G. R. 182. 481. These references will present an infinite variety of Examples -

Our Books generally every thing must be pleaded according to its legal effect. I should like the word may, instead of must, much better, when a party pleads on an instrument of form, and it is pleaded as it is, then it is left to the Court to apply the Law. It has been determined lately that in any deed or instrument, 2 G. Blk 11. The party may plead it according to its legal effect, if the instrument will admit of it, or precisely according to the instrument - and further general is that, that which already appears sufficiently in the record, need not be (implied) alleged.

7 Co 40. 9 Co 54. 11 Co.

11 id 25 a. Co Lit 303. 2 G. R. 77.

- 11 Necessary circumstances, implied in fact, there are alleged need not themselves expressly be alleged. In feoffment "livery of seisin" need not be alleged, from feoffment into "livery of seisin" (So when the reversionary interest is sold.)

Co Lit 303. b. 1 Plowd 220 b
2 G. R. 214. 2 id 305. a. n. 13. Falk 71 Linn 48

Pleadings

Mr. Justice Bullen the best evidence of his time says that when forfeiture is pleaded, without averment of ruin it is good after verdict. I conceive that the plea of forfeiture is good in any stage without averment of ruin. Mr. Bullen's statement that it was good after verdict, implies that before verdict it would not be good. Plain principles of reason teach that, the mischief of living of ruin, can be fatal in any stage of the proceedings.

12. ~~That~~ is admitted by both parties in pleading cannot be contradicted by evidence. For the jury have no right to find facts contrary to what the parties agree. It is then necessary to find matter of fact - 2 Aldon 5 Phil. 289, Lawes 48.

13. Tenement estates in fee simple may be pleaded or alleged generally I.L. It is sufficient to say "under a party out such a tenement was seized in fee simple without alleging how he came by it and when it commenced but he must ^{state} in a particular estate up to what a fee simple, the time and mode of its commencement must be alleged. La Key 331-3, Salk 562, 3 Wils 72, Co Lit 303. b.

The reason of this distinction is, that an estate in fee simple may be acquired by matter of ^{fact} ~~fact~~ ^{as by possession}, but particular estates can only be acquired generally by matter of ^{law} fact, no other estate than common-law except an ^{in fee simple} ~~in fee simple~~. And a particular estate must be alleged in the Dec. It is sufficient in the Dec. to state the Plaintiff came to the estate by fee tail, by years, ^{or} ~~without~~ ^{without} alleging the time and mode of the commencement of the estate. - A particular estate, after declaration, requires proof as to the time and mode of conveyance.

14 L. Ry 3324. What are often called immaterial aver-
ments must often be proved as alleged & the party
will fail. By immaterial averments are
meant those averments of facts not material but
if immaterial as are not immaterial, the
not immaterial

An immaterial averment need never be proved
by this is meant one that is wholly foreign to the
case, and need never be proved. 2 Green 207, n.
n 24, 26 & n 22. 2 Ch. Mer 381, n. 3. 14 B. 235, Doug 640, abbg, c. 16
2 Bk. R. 1104. 2 Burr 497.

The rule however that immaterial averments must
be proved is now confined to those cases when if they
were not proved as alleged there would be a variance.
This rule is confined to the pleading of records and
Express Contracts, in either of them when an im-
material averment must be proved. Doug 640. abbg
n. This note cited from Doug is expressed & he is in
a 'current. he says the rule is confined to records and
written contracts. If a man in an allegation
of inducement alleges a record which it is not necessary
for him to mention, & he states the date of the record
he must prove it as laid altho. there was no necessity
of stating the date, ^{as only stated}

A Landlord brought an action vs the Sheriff for taking all the
good of his tenants. who let it without leaving sufficient
to pay the rent. The Plaintiff stated in his dec. that a
rent had been due, which was necessary to allege. But
he went still further, that the rent was pay-able
termly - annually, altho this last allegation was unnecessary
to continue a claim, yet he was bound to prove it as laid.

Readings.

Now the propriety of the writ, *scilicet* *certiorari* is of no consequence as to the right of action, but it is stated in *Chancery* *decisions* that the Plaintiff is in this action, (Butt N.P. 5, Cap. Dig. 521, 2 McClellan 501-13.)

15. If any part of the pleading states ^{under} form or substance is in error and plea, this defect is regularly and is not admitted. If the adversary party pleads well and does not take advantage of it by specious demurrers, Now in pleading double: If the opponent party pleads in intention of speciously pleading to the defect, the defect is aided by the replication the party wins the privilege. But on the other hand when defect of pleading is in substance defective it cannot be cured, 8 Co 120. Co Lit 303, Lalk 509.

By matters of substance is meant that matters of fact which constitute the ground of the demand or defense.

By matters of form is meant the mode or the manner of alleging the matters of fact.

Generally neither party need allege more than will serve to a decision of the other plea.

This rule holds where both pleas are matters of substance & abatement, but matters in chief.

A Party pleading is not bound to anticipate the possible pleading of the other party, but defend it.

Now if the Pliff uses upon a particular content, and always an Inquiry upon it, now he is not bound to anticipate the defect involving in his response to various contents.
H. H.

Pleadings

17th There are two modes of concluding a plea. One by annexing to the country, & a verification. A verification is the only mode of leaving the plea open.

A conclusion to the Country concludes all pleas, this is a direct conclusion.

The Def^t. has a right to answer to the dec. in whatever manner he chooses. Suppose the Def^t. might plead in Bar, yet he must conclude with a verification to give the Plff. an opportunity of replying some new matter. But if the Def^t. had concluded to the country it would have barred the Plff. of his right of replication. This rule holds till a proper issue is made. 3 Blk 309. 10. Lawes 148. to 150-8.

Order of Pleadings,

The order of pleadings is this. After the declaration, is the Def^t's plea, to this the Plff. may answer by a replication. The Def^t. may reply. The Plff. may surrejoinder. Def^t. may retort. The Plff. shall rebut.

There is no room for any further stage of pleadings and in fact pleadings never go further than surrebut.

The subsequent pleadings on each side must follow the previous pleadings on the same side, if not the sub. pleadings must be in ballingbad. 3 Blk 310. La Ray 1499. Co Litt 304. a. Bulch. 117.

The pleadings being closed whether they terminate in a demurrer or an issue in fact and jury, will and must always go to the whole record.

Of the Declaration

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Defendants will always go against that party or show
it is the first radical and substantive defect. Now
if the Deft pleads a plea in Bar, bad in substance,
to a Declaration there is defect. Deft runs as
on the Pff. for a bad plea in Bar is sufficient to run
- over a bad Declaration, this rule holds throughout
the whole pleadings, so if the Declaration is bad the
Pff can never recover, 1 Sand 285, Hob 199, 200, 8 Co.
120, 133, b, 9 Co. 110, Talk 173.

1st The Declaration,

This is the first step of Pleading -

The term dec. & Count are frequently used as syn-
- onymous. In our civil Books, Count is more generally
for declaration.

Where the Pff says (or) when the cause of action is sole
and states the cause of action in one count. It may be
called either a count or a declaration.

But when there are different causes of action,
it where there are two or more statements of an
and the same cause of action, In such a case
each statement is a Count, all the Counts to-
- gether form the declaration.

Each Count purports a distinct cause of action, when
there is but one cause of action, this declares no
- one. It will always appear before the Judge is given.

The object of inserting different Counts when there is
but one cause of action is to meet and guard against
possible contingencies that may arise in proof.

Pleadings.

to show if he fails in one count he may recover on another. 3 Blk 295.

The Dec. must of course show all that is essential to the Plff's right of action. The Plff cannot recover on any matter which he does not allege. He must prove what he does not allege.

Plot 199. C. L. 17. a.

If then the dec. discovers any part ^{which shows} that the Plff at the commencement of the suit had no cause of action he cannot recover on the action. This is the case tho' the dec. contains all the material facts. Now in declaring on the Bond, the Plff states the time of payment in the declaration, and from ^{the time of} these dates of these it appears that service was made before ^{the time of} payment. The Plff cannot recover, because it appears he had no cause of action.

2 Found 397. 7 Co 24-5 100 C 325. See also 57. Bal. Mr. Pleas, Dec. 305.

On the other hand if the Dec. omits any matter of fact which is the gist of the action, the Plff must fail, so that not only the stating of matters wrong, but also in the omission of essential matters.

5 Abod 305 Brev Mr. Pleas, Dec.

Spec of an ac. of asslt. The Plff alleges no consideration in fact, for the consideration is the gist of a simple contract.

In all contracts, whether, when a condition precedes, it is essential in the Plff, and he fails, and he fails to answer upon him in his plea, the dec. is insufficient.

In such cases the Plff, in my opinion generally, is the only party who can, if the Dgr. pleads to give

Of the Declaration.

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and judge is bound to him. Supp^t may be allocated.
 Ben. Atk. Pleas. B. 1. 3 Bk 395. 4 C. 16. 412. Doug 658.
 with respect to the time of averring performance
 vide. - 1 C. 16. 645. 7 C. 16. Ben. Atk. Pleas. B. 2. 1 Linn
 319. 20. Doug 658.

On the other hand, when the Pff. is guilty of act^{ion} is gene-
 rally by a condition subsequent he is not bound
 to take any notice of it. When there is a sub. condition
 there is a prima facie right of action. This condition
 is in a defence, which belongs to the Def. to plead
 7 C. 10. 6 C. 16. 638. Exp. Dig 300. Ben. Atk. Pleas. B. 2. 1 C. 16. 254.
 The more familiar example is as in a penal bond.
 The Pff. does nothing but state the penalty and if the
 Def. expects to escape he must plead the condition.
 When there are independent covenants or performances
 the Pff. need allege no performance on his part. But
 when they are dependent, he must always allege
 performance.

Independent Covenants are generally called independent Covenants.
 This is a term, not particularly correct, for dependent Covenants may be recip-
 rocal, when the promise of the Def. was made in consist-
 of the Pff's promise. The Covenants are Independent.

If I promise to deliver 50 Bushels of wheat on a
 certain day and B. promises to pay me the price of it,
 if the Court is independent. These two actions may be
 pending at the same time, for enforcing each other's
 performance. But I had promised to deliver the wheat,
 in consideration of his paying so much for it. The
 Covenants would be dependent as one act rests

upon another. See Jan 645. Ben. Atk. Pleas. B. 2. 1 Linn

Cor 354. 5 C. 16. 2d ed. 309. 2 C. 16. 240. &c. &c.

Exceptions in a matter, always of a State, and a common

Headings

Every Dec. must contain what is called Certainty.
 I.C. The court must be certain that the Deft. may
 be entitled to plead the judgment in bar to a subsequent
 action for the same cause. This certainty is given
 as to particular terms Place and Subject matter. 98
 The Dec must be certain in all these particulars.
 5 Co 34. 54 Bar 2456. Bar abt Pleas B.1. Co Lit. 303. a.
 Lawes 52. 7.

The precision required as to certainty. has been more
 particularly explained to subject matter.

No greater certainty is required than the circumstantial
 of the cases conveniently admits of. In the action
 of trover brought for a ship and sails. the description
 was "thick & small". This was held sufficient, again,
 where Trepper a Jew, was brought for Books. The words,
 "Library of Books", were held sufficient, 2 Term 74
 5 Co. 34. Butcher Pleas B. 5. Co. B. 817. Tith 628. Ann 637.
 When called upon for many examples.

On the other hand. when the action was brought for "whit's any
 fish", the words were "some fish". They were held insufficient
 for want of certainty.

In another case. the action was brought for "two sheep
 of Colch". & held insufficient for want of certainty.

In another case the subject was described as "seven
 pieces of linen", without colour, quantity &c. This was
 held insufficient. These distinctions like quantity with
 good sense of the Judges Co. B. 866, 2 Term 243, 5 Co 34.

It is impossible to learn from examining the legal cer-
 tainty required in a declaration. The cases are so multi-
 plicious. The good judge dissects 98 with dis-
 tinction.

The rule requiring certainty is not exact in relation to matters of inducement to a given case as to what is called the year of the action, because the facts are constituted not the merits of the case & they are not traversable. *Livesey v. 2. 118.*

Inducement is a matter introductory to the principal matter & which is necessary to explain a matter in

Matter of Aggravation, is that which shows the circumstances of enormity attending the act. & may be found in damages. For instance, matter of Lying & finding in House must be stated as inducement, yet it need not be proved, so to in matter of Battery the appearance the risk of enlargement & beating of servants &c. then are matters of aggravation, showing the enormity of the act.

The words "said," "aforesaid," "beforementioned," &c. are all help import sufficient certainty, if there are more than one antecedents, to which they are referable. and if in a declaration more than one counts is mentioned, and afterwards the words "said Count" is used. In all such cases the word "first" aforesaid, a "last aforesaid," are necessary to constitute certainty. *8 T.R. 178. 2 B. & 66. 888*

A Dec. may be in part for certainty and good for the remainder over the other, but our course, in the Dec. aforesaid in two counts, suppose an action of Tress is brought for the conversion of two chattels one sufficiently and the other not sufficiently described and he may recover for the one yet not for the other, our course is good the other way. If in Court spoken the P.M. says in two counts. The one sufficiently certain and the other, not sufficiently certain. he may recover on the one & find on the other.

See Dig. Co. 32. 1 Talk 218. 1 Salk 286. n 2 id 374.

If one declares upon a contract a conveyance ^{to constitute} then
which, an instrument, a deed, is required at C. Law,
the deed or instrument must be alleged. Then if one
is called upon to establish a right a conveyance
privilege, a deed must be alleged. because at C. Law
it is required to its validity 12 Mod 540 Talk 514 But N. B. 274.
Coop 289.

This is necessary as to the general rule that the party must
allege all those constituents the right of action, now
here the instrument is the foundation of the right
6 Co 38-43. b. 2 Wils 376.

The rule is the same when one pleads a contract a
conveyance unknown to the C. Law but which is author-
ized by Stat. Law & required by Stat. Law to be in writing.
- At C. Law a Tenant in fee with a lease could not declare his
land. By Stat. afterwards he could convey by writing. The
writing is an essential part of the lease and the deed
must be alleged, in such.

The writing in these cases is the instrument creating
the right and is essential to its validity ^{existing at C. Law.}
But on the other hand in declaring upon a contract ^{existing at C. Law.} where
writing required by C. Law not required by Stat. Law, yet it
is not necessary to allege the writing. This rule
includes the case of pleas of perjury in this class it
requires the instrument a writing which the Stat. Law creates
creates not a right. but a mere evidence of an agreement
of perjury, there being good at C. Law before that, and it is
allowed without producing the writing a copy writing. The
Statute introduces this rule not as a rule of pleading
But as a rule of evidence.

Yet if such an agreement is pleaded in Ban by a deff.
it must be averred to be in writing for non est
scriptum is required in Ban then is necessary in the dec.
Salko 519, Bul. & P. 279, Reg. 450.

From these principles relating to contents, good at C. L.
and afterwards required by Stat. to be in writing, these
results this imported consequences. What if an declar-
a such contents as in the class of pleas & pleas
of the deff. declares to the dec. he not only expects
the plea but a plea in writing. The Ct. cannot
know upon the dec. any thing of the evidence which is
to support it, by declaring the deff. pleases the giving
in of any further evidence is writing, a declarer pleases
the plea from producing the writing even if he has any
- Reg 351, Corp. 289, Salko 519, Bul. & P. 279.

A Dec. may be either General or Special, and all
the difference is the mere generality of status and particular
manner of status. A Dec. on the general part of the
bond is gen. But declaring on the particular part &
the condition & then alleging a breach, it is special
Bul. & P. 111, Reg. 102.

A plea in denial; or a denial is not bound to set out
any more of it than will settle him to denial.
I do not mean that he may select in part and
omit another part. Doug 649.

In the ac of Asp? it has lately been decided whether the
word "Pleas" is now in use is possible. But has been decided
& I think agree that the word "agreed" is tantamount to "Pleas".

It would be extremely captious in the liberal notice of apt.
2 N.B. 62, 3 Mass. 160. to require such nice precision
I am proud to state rules & points under particular heads.
In the first place I propose to treat of:

Joinder

1st Who may join as Plaintiffs?

Who may join as P^l? When two or more persons are
jointly interested in a right to be affected by action.
They may and regularly ought to join in an action
for the violation. Thus a Note to two joint promisors
a B & C to two joint payees, and if either of them
are omitted, the suit may be abated. 1 Ch. 9 291. H.
153. 5 N.B. 651. 5 Co. 18. B. 19. A.

And as the rule has always been till late Joins
Tenants, must join as P^l to recover their joint
estate, because if two or more Joint Tenants are
injured in the violation of their estate, the injury is joint,

But it has been decided since in Eng? a Son in A. F.
that Joint Tenants or Co-tenants may join as several
in the action to recover the violation of their joint estate

12 Co. 57. 61. 2 Ch. 10

169. This modern rule of Eng? an N. York has been the
innovative rule in this State.

But when the right violated is vested in only one indi-
vidual no other can join him as P^l. for the right
is not held to a stranger. and he may take advantage
of this misjoinder either by plea in abatement, or a motion
for the Dis. join. It is impossible for one solely entitled
to recover, to put in the power of another to recover
with him as Joint P^l. C. 8 143. 1 L. 315

In actions for libel as such all must join as if the one of them may be incapable of acting, or refuse to accept the terms, or refuse to join in proving the case he who refuses to accept the terms may often be retained. 1 Sand 291. Toller on Ex 446. 1 Falk. 3. 9 Co. 37.

If one is omitted however it must be pleaded in abatement. 1 Sand 291.

If an Ex^t declines to act in a suit, the Ex^t is summoned to appear & if he then declines there is a severance awarded by the Court & the Ex^t is excluded from the list.

Ex^t Par 420. Toller 446

If the several rights of two or more are violated by one and the same act they cannot join in this action for the injury. As if several words are spoken of two or more at the same time and at one and the same place by one and the same person, yet the parties should not join, the reputation of A. is not the reputation of B. Ex^t Co 512. Op. Dig 504. Bux c. 12. pleas B 2. Bux c. 12. 5. 2 Nels. 427.

If a discharge in a Ball kills the horse of B. and falling on his back at his house, here B. & C. cannot join, for the act is several.

If there are two or more joint creditors and one of them dies, his Ex^t cannot join with the survivor for by the death of one, that which was owing jointly has been severed, the right of sharing & becoming a creditor in the survivor. The joint right has become a several right. The survivor must sue? the rule the Ex^t 1 Ex^t 497 1 Bos & P 445

If a case is made with two more actually and then others, an error, each on his death transmits all his rights of action to his representatives.

Joinder of Defendants,

When the claim of action arises out of the joint cause, and defendants of two or more persons they may be joined if the action is in tortious they must be joined as Defs. Thus if A & B commit trespass together a joint is a trespass. They may be joined as Defs. or the Pff may maintain a separate action on each a separate one as well at the parties election. Bac. 4th Ed. New. 32. Red. 6. Little 262. Bulke. 5.

If two persons join in, nullifying a bill (the may be and also a jointly as if there be more than two, any number less than the whole may be made, for generally a bill is a joint debt as well as an act of trespass. 2 Ben 985. 2 L.R. 199.

But when there are distinct torts committed by 2 or more persons severally, they cannot be joined as co-defendants. Their acts are several, each party is solely liable. If A, & B, at the same time and place from - once the word simultaneously, "if" is a thing, each is severally liable. & this is because in speech no person can join, the act must be several. Bul. 4 P. 5. Civ. Law. 674. Br. 4th. Pleas B. 2. Cap. 31. 304.

A fortiori if one is injured by several acts of two or more persons committed at distinct times he cannot join them as Defs. Suppose A. trespasses on my land to day in taking part of my crop & tomorrow B takes the remainder of my crops. They cannot be joined.

If two or more bind themselves by a joint contract they must all be joint in the action, for it is the act of all. But if A & B bind themselves jointly and severally by the contract, they may be sued severally or jointly 2 Ves 99, Lick 393 3 Bos 697.

If B promises to bind themselves jointly & severally each may be sued alone & they may be joined all together. But two of them cannot be sued either the third, for this contract may ~~be~~ ^{be} joint or joint & several, a severally or partly joint & partly several; 3 W. 782, 1 Leach 291, E. M. Yels. 26.

If two bind themselves by a joint bond (as in the case of a joint debt) the Co. cannot be joined with the surviving debtor, as to the debt the only rule of joint is or joint. This holds as to all joint contracts, tho' if the debt is compelled to pay the whole, the Co. must contribute. But if two persons bind themselves jointly and severally and one dies, here the survivor may be sued alone, & the Co. may be sued alone, but never jointly. 1 Leach 400

If an action is to be brought vs the Co. the Plff must join in his action all those who have acted & admitted the Plff need not include him who has refused, as this is only respect to the form of the Co. is different from joining them as Co. 1 Leach 291, P. S. M. No. 557, Com. Dig. Abate § 10.

Pleadings.

Joinder of Actions;

When there are several causes of action of the same nature between the same parties, they may be joined in one declaration. But they must be laid in separate counts, each cause of action forming one distinct count.

160. Bar. 4th Pleas B. 3. Com.

Id. ac. P. Comb. 244.

By causes of action of the same nature are meant such as require the same judgment at C. L., as C. L. in 'Cine' action there are two sorts of Indictment, a "Capitulation" & "Misrecorde", where the Off. is subject to a fine or toll. The judgment is here at C. L. is a Capitulation that he is to be taken and committed to prison, until he has given to the King for Breach of the Peace.

But when the party is subjected to a Contract, or for a wrong or committed with force, the judgment is Misrecorde & C. L. that he be released in damages. Bar 191, 2 Wils 319, 1 Inst 366. 4 Bar. Pleas B. 3. Doug 652.

This rule does not require the causes of action to be of the same kind and Remedy or bond, and still a simple contract may be joined in the same action.

And undoubtedly debt or bond may be joined with Ass. & a person. Note, they both require the same judgment, viz. Misrecorde. Cas. P. 20. 316. 1 W. 276. 1 Wils 252.

But the general rule before has been that "when the causes of action are of the same nature between the same parties, they may be joined."

1 Wils 252.

Joinder of Actions

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But it is universally true that when several causes of action unite, between the same parties, and the same things, the same facts and the same place, they may be joined in one declaration,

If A^{has} two or more bonds he may join them all, if it is indebted to B by several verbal promises, if A owes B. by a Prom. Note, B. of Ex. and verbal promise. They may all be joined. 1 S.R. 276. 1 M. 252. J.E. in the 1st case these bonds may be all the subject of one action in several counts. so. in the 2^d instance all the verbal promises and in the 3^d the Prom. Note B. of Ex. and verbal promise may be joined.

It is now everywhere understood that the Plaintiff and the Defendant, and when all the different causes of action in one and the same right have and the same capacity, if when one sues in his own right for the right of another the rule does not hold. 1 S.R. 347-8.

But the third is to be considered, yet our Books leave it as a doubtful point whether Pleintiffs & Defendants can be joined in one dec. I find this not only asserted but I remember they cannot be. I conclude that the action of Execut^t cannot be joined with any other action, because in Execut^t it is nominal as the Plaintiff is nominal, the real Plaintiff is the Estate, does not appear and cannot, to be the same person as the Plaintiff in the other count and this I remember a decision See. Stat 249. But other Pleas B. 3.

This does not seem to be. (if there ^{before mentioned} be such an exception to the universality of the rule, it can be in the case of the record if the Plaintiff had joined they would

Joinder of Actions

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It is never originally in both cases. It does not
actually 37K.659, 3 Est 104.

On the other hand, Joinder of actions of a different na-
 tures. 12. Joinder requires different joinder at C. L. and
 cannot be joined in any case, thus Joinder, I can
 treat in one dec. for they are only requiring differ-
 ent joinder but also differ. Pleas, 1 Salt 10. 1 Bar. 30.

An action "Joinder" be joined with "Joinder" on the same
 even though the Joinder on the same is a defect, and must
 be Joinder in Contract, for here the joinder is a defect.
 (C. L. 12). But the Joinder, 3. Bar, 233. Bar, 233. 2 Wils. 319
 1 Quest 366. 2 Bar. 1114. Carth. 189. 5 Wood 90.

And in no case of any kind, can Joinder be joined
 with Joinder. I get for tolls just committed with
 for the joinder in the same as in Joinder in Contract
 but the joinder is a defect and the Joinder is a defect.
 1 Salt 10. 1 Bar 30.

An action Debt & account, even be joined in an action
 for the Joinder is founded in contract. The joinder
 & Joinder are different, and what is a still stronger
 reason is that the Joinder are entirely different.
 I cannot think account can never be joined with
 any other case of action whatever. Account requires
 two judges, the principle of these two can
 be tried by two different Joinders. But the Pleas B.3.
 1 Wood 42.

The distinction then are then, as to Joinder of actions.
 1. When the Joinder and Joinder are both the same
 they may always be joined provided the parties are the
 same & they ^{sued} ^{sued} ^(C. L. 12) the same & community

Readings.

2.^d In Gen. the. may be a joint in action tho the
plans are different and the gen if in a diff. point
they all require the same right at Con Gen.

3.^d When on the other hand, the points alone agreed
by different commission diff. & a portion when the
points & gen if are both different. I cannot then
see never be a joint.

N

Misjoinder of Actions.

The improper joining of causes of action in one dec is
called a misjoinder of actions.

I will explain the difference between Misjoinder & Duplicity
which are frequently used in books as synonymous terms.

A Misjoinder of actions consists in a misjoinder of diff
causes of action in diff. counts to upon different di-
tinct rights of recovery, as if one sues B declaring
in the first count for "assault & battery" & in another count alleges
as B for debt on Bond; this is misjoinder.

Duplicity consists in joining different grounds of action
in one count to enforce one entire right of recovery.
Thus if it sues B in ass. for money and at the same
time charges B with fraud in the contract. I remember
with a count of "promissory estoppel" this mixture of fraud
with contract makes the declaration double.
This Duplicity forms a distinct head and this bill.
Duplicity is a fault in form, but a Misjoinder is a
substantial, in an all fault.

Misjoinder of Actions.

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If the P^l misjoins. This is good cause of demurrer &
if the D^f should obtain a verdict. H. D. 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

The reason why a misjoinder of actions is a fatal defect is this,
that in no kind of action can there be more
than one formal plaintiff. Two formal plaintiffs the D^f
cannot have, if he obtains (justly) a verdict in both. &
he claims judgment for both, ^{he cannot claim it} but one judgment.

It has been a question whether a change in the D^f is sufficient
with breaking a bond and beating the servants "and
per servitum amicitia" ^{is not a misjoinder, but} this is well settled that the joinder
is good. for the beating of servants is not regarded
as matter of aggravation, & there is but one joinder
of action. there is no misjoinder, & if the "per servitum
amicitia" were omitted, the dec. would
then be good. there could be no reason needed for both
a return. yet the beating of servants could be joined
as matter of aggravation. See also Hen. D. 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

The rule permitting joinder of actions of the same nature
is not imperative, but permissive. For if one
has cause of action of the same nature permissibly
he may bring several actions. But frequently it is
used as a rule of practice, that who reverse different
actions in different parts of the same matter. & let the
same parties, & the Court can well a consolidation
of actions, for preventing costs.

Readings

But if there is an Affidavit to show the cause of action appears to be the C^t will not compel, a contribution ^{bonds}. If A holds two or more actions vs B. the C^t would compel a consolidation of actions. See also the B.3. Court 246 2 N. 639, 2 Wm 1149-78.

When a consolidation is thus ordered the Plff is compelled to pay the costs of proceedings. De Gaboriau 2 W. 639, 1 Ch. Dec 186. It is ordered here that the Plff be counter-joined to the Defs with separate actions.

In this State the Judge, in civil actions, as to Court fees, do not raise, but then are no parts of Caption & misnomers, but in the other States I believe they are ordered. But here, the same rule is observed, to prevent parties in the administration of Justice. There is no objection now in Eng? 5. How Lit. vi. et armis, 191-3. There is Eng? The caption is taken away the rules as to misnomers in the same.

Miscellaneous Rules,

1. The dec. must agree with the writ. for the writ is that certain authorities are proceedings. If the writ entitles the action "Chippie, Steamer deced" in contract, a "Case" b If the writ is entitled "debt" the Plff cannot deced in Chippie. Doctor and Students, 184. See also the B. 4, 3. Cas. 325, Nat. 180.

The C^t & C^t have adopted a rule not allowing the Plff to take advantage of the writ & thereby prevents the Defendant from taking certain exceptions. But this has nothing to do with our practice.

2. Those facts which constitute the substance & gist of the action must be stated positively & not by way of argument.

This Rule I conceive does not hold of well facts in the case, however important they may be, unless they are distinctly traversable by plea. Thus when a fact is set up as a conclusive exception, the Plff says, that the Deft. was indebted at such a day, and indebted & further promised to pay, here the counter, is the gist of the action yet not being traversable need not be positively stated.

Thus in the action of trespass the 'possession' is the gist, the Deft. need not state, that, alleged it particularly, for here the possession cannot be distinctly traversed.

again in an action of trespass down is an animal "science," is necessary to the gist of the action, yet the matter is never put in issue, particularly alleged, because it is not traversable. Their qualification I find not in the Book, & I am answerable, but I draw a conclusion from plain principles, from Books 106. Geo. E. 201, Com. Dig. Pleads. 3. 14. Ben Abr. Pleas B. 4, 4 Co. 18. b. for precedents, and Ch. 11, Mordaunt's Reports 10 and answers.

This gen rule does not hold down relates to the required positiveness in stating the substance or gist of the action does not apply to matters of aggravation or matters of indemnity, because such is not traversable. Ben Abr. Pleas B. 4. Yelv. 70. Popph. 177. Lawes 71. 2. 118.

But the Gen rule does hold when the Deft. pleads not in issue a denial of the fact alleged.

Headings

because if any material part is not clearly
stipulated, that part of course must be distinctly
traversed, this is Court's hope. if it was B. then his
right of anti access is a ^{condition} precedent performance of
must use the performance of that condition ^{distinctly}
and distinctly.

If the dec. is for any even good in price and in any
^{the whole is deemed to} less elig. the Off may come in that part thereof
provided the price which is good is a good direct
cause of action, suppose it runs B. in then Br. comes
of the estate, one supplicity and the it is reflected
directly, the whole dec. is deemed to, but the Off
will even in the estate supplicity directly, as by
a direct cause of action. Suppose in Gloucester, the
action counts containing, and is one case action
and is the other there there are not, then the Off may come
in the good cause the the other be de. See In 104. But
then B. G. Nov 178. 10 Coke 115. 1 Lanc 286. W. n. 216
379. Lanc 59.

The last rule holds ^{g. ex.} in all cases, whether the
 the are 2 ^{or 3} ~~or 4~~ ^{or 5} ~~or 6~~ ^{or 7} ~~or 8~~ ^{or 9} ~~or 10~~ ^{or 11} ~~or 12~~ ^{or 13} ~~or 14~~ ^{or 15} ~~or 16~~ ^{or 17} ~~or 18~~ ^{or 19} ~~or 20~~ ^{or 21} ~~or 22~~ ^{or 23} ~~or 24~~ ^{or 25} ~~or 26~~ ^{or 27} ~~or 28~~ ^{or 29} ~~or 30~~ ^{or 31} ~~or 32~~ ^{or 33} ~~or 34~~ ^{or 35} ~~or 36~~ ^{or 37} ~~or 38~~ ^{or 39} ~~or 40~~ ^{or 41} ~~or 42~~ ^{or 43} ~~or 44~~ ^{or 45} ~~or 46~~ ^{or 47} ~~or 48~~ ^{or 49} ~~or 50~~ ^{or 51} ~~or 52~~ ^{or 53} ~~or 54~~ ^{or 55} ~~or 56~~ ^{or 57} ~~or 58~~ ^{or 59} ~~or 60~~ ^{or 61} ~~or 62~~ ^{or 63} ~~or 64~~ ^{or 65} ~~or 66~~ ^{or 67} ~~or 68~~ ^{or 69} ~~or 70~~ ^{or 71} ~~or 72~~ ^{or 73} ~~or 74~~ ^{or 75} ~~or 76~~ ^{or 77} ~~or 78~~ ^{or 79} ~~or 80~~ ^{or 81} ~~or 82~~ ^{or 83} ~~or 84~~ ^{or 85} ~~or 86~~ ^{or 87} ~~or 88~~ ^{or 89} ~~or 90~~ ^{or 91} ~~or 92~~ ^{or 93} ~~or 94~~ ^{or 95} ~~or 96~~ ^{or 97} ~~or 98~~ ^{or 99} ~~or 100~~ ^{or 101} ~~or 102~~ ^{or 103} ~~or 104~~ ^{or 105} ~~or 106~~ ^{or 107} ~~or 108~~ ^{or 109} ~~or 110~~ ^{or 111} ~~or 112~~ ^{or 113} ~~or 114~~ ^{or 115} ~~or 116~~ ^{or 117} ~~or 118~~ ^{or 119} ~~or 120~~ ^{or 121} ~~or 122~~ ^{or 123} ~~or 124~~ ^{or 125} ~~or 126~~ ^{or 127} ~~or 128~~ ^{or 129} ~~or 130~~ ^{or 131} ~~or 132~~ ^{or 133} ~~or 134~~ ^{or 135} ~~or 136~~ ^{or 137} ~~or 138~~ ^{or 139} ~~or 140~~ ^{or 141} ~~or 142~~ ^{or 143} ~~or 144~~ ^{or 145} ~~or 146~~ ^{or 147} ~~or 148~~ ^{or 149} ~~or 150~~ ^{or 151} ~~or 152~~ ^{or 153} ~~or 154~~ ^{or 155} ~~or 156~~ ^{or 157} ~~or 158~~ ^{or 159} ~~or 160~~ ^{or 161} ~~or 162~~ ^{or 163} ~~or 164~~ ^{or 165} ~~or 166~~ ^{or 167} ~~or 168~~ ^{or 169} ~~or 170~~ ^{or 171} ~~or 172~~ ^{or 173} ~~or 174~~ ^{or 175} ~~or 176~~ ^{or 177} ~~or 178~~ ^{or 179} ~~or 180~~ ^{or 181} ~~or 182~~ ^{or 183} ~~or 184~~ ^{or 185} ~~or 186~~ ^{or 187} ~~or 188~~ ^{or 189} ~~or 190~~ ^{or 191} ~~or 192~~ ^{or 193} ~~or 194~~ ^{or 195} ~~or 196~~ ^{or 197} ~~or 198~~ ^{or 199} ~~or 200~~ ^{or 201} ~~or 202~~ ^{or 203} ~~or 204~~ ^{or 205} ~~or 206~~ ^{or 207} ~~or 208~~ ^{or 209} ~~or 210~~ ^{or 211} ~~or 212~~ ^{or 213} ~~or 214~~ ^{or 215} ~~or 216~~ ^{or 217} ~~or 218~~ ^{or 219} ~~or 220~~ ^{or 221} ~~or 222~~ ^{or 223} ~~or 224~~ ^{or 225} ~~or 226~~ ^{or 227} ~~or 228~~ ^{or 229} ~~or 230~~ ^{or 231} ~~or 232~~ ^{or 233} ~~or 234~~ ^{or 235} ~~or 236~~ ^{or 237} ~~or 238~~ ^{or 239} ~~or 240~~ ^{or 241} ~~or 242~~ ^{or 243} ~~or 244~~ ^{or 245} ~~or 246~~ ^{or 247} ~~or 248~~ ^{or 249} ~~or 250~~ ^{or 251} ~~or 252~~ ^{or 253} ~~or 254~~ ^{or 255} ~~or 256~~ ^{or 257} ~~or 258~~ ^{or 259} ~~or 260~~ ^{or 261} ~~or 262~~ ^{or 263} ~~or 264~~ ^{or 265} ~~or 266~~ ^{or 267} ~~or 268~~ ^{or 269} ~~or 270~~ ^{or 271} ~~or 272~~ ^{or 273} ~~or 274~~ ^{or 275} ~~or 276~~ ^{or 277} ~~or 278~~ ^{or 279} ~~or 280~~ ^{or 281} ~~or 282~~ ^{or 283} ~~or 284~~ ^{or 285} ~~or 286~~ ^{or 287} ~~or 288~~ ^{or 289} ~~or 290~~ ^{or 291} ~~or 292~~ ^{or 293} ~~or 294~~ ^{or 295} ~~or 296~~ ^{or 297} ~~or 298~~ ^{or 299} ~~or 300~~ ^{or 301} ~~or 302~~ ^{or 303} ~~or 304~~ ^{or 305} ~~or 306~~ ^{or 307} ~~or 308~~ ^{or 309} ~~or 310~~ ^{or 311} ~~or 312~~ ^{or 313} ~~or 314~~ ^{or 315} ~~or 316~~ ^{or 317} ~~or 318~~ ^{or 319} ~~or 320~~ ^{or 321} ~~or 322~~ ^{or 323} ~~or 324~~ ^{or 325} ~~or 326~~ ^{or 327} ~~or 328~~ ^{or 329} ~~or 330~~ ^{or 331} ~~or 332~~ ^{or 333} ~~or 334~~ ^{or 335} ~~or 336~~ ^{or 337} ~~or 338~~ ^{or 339} ~~or 340~~ ^{or 341} ~~or 342~~ ^{or 343} ~~or 344~~ ^{or 345} ~~or 346~~ ^{or 347} ~~or 348~~ ^{or 349} ~~or 350~~ ^{or 351} ~~or 352~~ ^{or 353} ~~or 354~~ ^{or 355} ~~or 356~~ ^{or 357} ~~or 358~~ ^{or 359} ~~or 360~~ ^{or 361} ~~or 362~~ ^{or 363} ~~or 364~~ ^{or 365} ~~or 366~~ ^{or 367} ~~or 368~~ ^{or 369} ~~or 370~~ ^{or 371} ~~or 372~~ ^{or 373} ~~or 374~~ ^{or 375} ~~or 376~~ ^{or 377} ~~or 378~~ ^{or 379} ~~or 380~~ ^{or 381}

But in every such case, if judge be found on all
the counts, all entire demands are paid at the end
and discharge, the Cr. must be approved as such by
the Exch. mag., a mes j'ay mis me aucc. de main
de mes. et le Cr. 130. Bal. et ⁸ 180. 2 Br. 985. 2 H. Bl. 318.
Long 696 et 731. 1712. 508. 532. Rev. 813 316.

This rule has been unanimously agreed by our Supreme Ct. of Errors. The sense of this rule is plain. The Ct. of Errors damages on the face of the record. The jury is supposed to know nothing of law but of facts. The Ct. does not know upon damages and had upon verdicts. The Ct. do not know but damages may have been offered on one count only.

But this rule does not hold, when the last of the demand appears on the record as to both counts, because the several counts appear upon the face of the record and though the Ct. can have it in their power to know. See Dec 104. Nov 178. the propriety of the assessment.

The rule also does not hold if damages are offered upon each count. In this case the sense of the rule does not exist. 1 Hall 576. 2 Sand 176. 1 Cr. 388. 38.

The plea which the Defendant puts in of two counts.

1st Dilatory Pleas. which contains an exception to the mode in which the remedy is sought, and does not go to the merits of the action —

By the 1st Plea 4th Sec no dilatory Plea is admitted unless an affidavit is given that the Court has examined the facts to convince the Ct. that the Plea was made to prevent abuse and is dilatory being

3 Bk 32 3rd 51. See also Pleas 41. 2.

Pleadings.

Every Def. Pleas. 1st in order is to the jurisdiction of the Court. The cause of pleading to the jurisdiction is, as in Bay? a matter of the law may plead that he belongs and to the C. (1)

again when the C. is of a limited jurisdiction it is a good plea that the cause of action arose out of its limits, Co. H. 11.354. 3 Blk. 301. Falk 544.

Another good plea. Is that the Ch has no cognizance of the subject matter, as if a lease action was tried in the K.B. is a criminal action, is a C.R. C.R. But when there is want of this jurisdiction the Def is not compelled, unless it is necessary for him to plead to it. he may take exception even after verdict and the Ct will exclude the case as of no effect as to the suit the Ct is om. column. non ^{pro} judice, 1 Co. 352, 1 Vent. 333, 10 Co. 68. But the Pleas. H.!

It is in some cases agreed of exception to the jurisdiction that the cause of action arose in a Foreign Country. But this is no objection in Transitory actions. If the goods or other were taken wrongfully in Bay? or France, the Deft. might be sued here, being Transitory action, 10 Co. 612. See Ray 1532, 2 Blk. 1058, 4 M. 503.

The distinction which Transitory & Local action renders it necessary.

(1) In common law there are such rules, and have fallen in a course of time, from the operation of an English Statute, as given in the first day of the book,

Local Actions

Actions are local 1st when the judge is not in the place, I.C. when the judge is to transfer the specific property in question, as a judge is determined where it seems most convenient. If the action did not give the alternative to the Defendant. If an act of Parliament is been in this State to remove lands in the State of N.Y. has and the writ of possession be enforced? It would not. Criminal prosecutions are also local, for all crimes are local. This follows from a fundamental principle that an offence is the law of one State is no offence to another.

3^d. Actions are local when the subject of the action is local even tho the judge be not in the place, as in trespass "quare claim-freye", this is a personal action, yet it is a local action. the title to land may

come in question 2 Blk. ¹⁰³⁸ 158 Corp 161-175-181. 2 Her Blk 145-161-2. 4 Y. Rep. 503. Stow 646. 2 Blk R. 1038.

Does a mere Court that opens the office of a Clerk as to local Real is local, because he looks up the Court & Real, but this is not the correct view.

(a) The Defendant is liable with to return the specific goods to pay their value.

Readings

The reason is that the lessee's lease begins the contract runs with the land. 2 East 580. Costt 183. 1 Lums 241. b. There is priority of Estate.

It is material to observe that Debt or Cont^y by the lessee is the original lease is not local. for by priority of contract he is bound as to a personal contract, in part. he is bound in priority of contract. his Assⁿ is like only in priority of Estate 1 Lums 241. b. 7 Co. 2. d. Colld 194. 2 East. 580.

All actions not local are Transitory. If

This plea is put in order. because an admission when it is of a matter to receive a plea to the jurisdiction, is waived by any other plea. The principle is that the Def^t by taking this method of replying to the Pl^t any other defence or question, than that of its jurisdiction tacitly admits its jurisdiction. See the Pleas C. 2. & D. 2. Colld. 146. b. 164.

By the rule of the Com^{rs} Law. the plea must be signed by the Party and not by Att^y and as this objection occurs that a plea signed by the att^y is presumed to be signed by permission of the C^t which tacitly admits the plea, the plea of jurisdiction,

See the Pleas C. 1. Colld 146. Lums 91.

Of Dilatory Pleas.

149

This is now heard in an Ct. It is here used by Attorneys.

On the other hand when the (Ct.) want of justice of the subject matter exists. the deft. cannot win the objection. Because the Ct. is sworn as to be to decide it, as if an entire subject be left, upon a Justice of the Peace.

This plea comes in to the exigency of the Ct. ^{by saying} that the Ct. will have further exigency of the rule 3 B/k 303. But see H. H. H. E. 1.

2^d Dilatory Pleas to the Dismissal of the P^l =

These disputes are common and at C. L. the law is now becoming obsolete, & it is better in the P^l, we have no proof in this State. It has existed in other states & has been a common principle in 1794, L. 128. A. B. C. H. H. E. 1. There are two or three similar disputes relating to Outlaw, which have been decided, are Outlaw by the way this is said to be true. The disposability is not intended to prevent him and an immunity. but to prevent him of a crime again. Nov 1, 1860, 3 B. C. 161, 162, 163.

Outlaw is sometimes pleaded in B. C. in other ways as a dilatory plea. The intention is this, when the Court of justice is stated forbidden by his ordinance by Union, along all debts due (to any) thus outlaw goes to the Court to be seen.

Pleadings.

But when the right of action is not forfeited,
it can be pleaded only as a dilatory plea.

5 Co 109, 7 id 29. Co Lid 29. 128. 13.

1 Ch. D. 473. Lamer 38. 104.

There are some kinds of Outlays

1 Recommendation. This title
election is obtained, depends on of his principles. Ben. etc. H. 8. 1
3^d Plea. is Alienage. That the M^t is an alien's
in some cases pleads to his disability, but not in all.
An Alien Friend can maintain no action here or
reversed. This is a peculiar law in this State &
sanctioned by Cong. Laws. But for States have given him
the privilege. he must receive jurisdiction from the reg-
ulation.

An alien Friend may maintain personal actions,
here is no objection, he may hold it in any Court
Cap 171. 3 B12 384. Cap 84 438. Ben. etc. Plea C. 1. 1st 11
371 2. The 1382. This is unquestionably a law of
national policy. To allow Foreign to hold property
is thought to be essential to the safety of the State.
But an Alien naturalized a "born" alien
may hold real property.

But with regard respecting the disability of the alien.
 there is this Exception. An alien friend may have a chattel
 estate in L.C. a lease hold interest in a house. This is
 an exception for promoting commerce. in such case the
 alien may maintain questions to secure his property. C. L. 2.
 B. But the Alien Co. people 36.

Who is an Alien. The answer of the C. L. is that ^{all} persons
 born in a foreign sovereign State are aliens
 This has been much modified by Stat. as in case of
 emigrants, vide 3 B. 366, 372. But the Alien Act
 4 T. R. 368.

But by Stat of U. S. the children of native citizens, who
 have arrived in any foreign country, but all the rights
 of citizens from citizens. The same rules hold to children
 born of persons naturalized. so also the children of for-
 eigners, naturalized before their parents naturalization. As
 the rights of a native citizen. in case they were not
 of age when their parents were naturalized.

Stat U. S. Vol. 6. 17.

The rule of the C. L. that an alien could not inherit
 has been revised in favor of the U. S. in some the rule has
 been enlarged & in some totally abolished. This is only in
 a few States.

American Ed. Eding. 9. Precept. 7th. Alien

Pleadings

This rule laid down applies to alien friends -

But against alien enemies the rule is very different.

It is a general rule that an alien can maintain no action whatever. They have not the privilege of our Laws. They may be the subject to certain protection. Thus 1082, B. & the O. H. J. 1, 1 B. & P. 163, 6 J. N. 23-49, D. & G. 626, or 649, Marshall in his, 36-7.

It is a general rule of C. L. that all contracts with an alien enemy are void, to this there is an exception in case of Maritime Contracts. & this cannot be expanded till time of peace, & then it must be referred to a C. of Admiralty 3 B. & 1734 D. & G. 619, 1 B. & P. 563, Marshall 3 J. N. 432.

Notwithstanding the general rule, yet an alien enemy, really has not a license, protection or safe conduct from the C. & Govt. may maintain personal actions.

See R. v. 282, L. & C. 46, 8 J. N. 166, 2 J. N. 166, 2 J. N. 166, 2 J. N. 166.

An alien friend or ^{friend} C. & Govt. may hold land of any real property, but in his own right he can maintain only claims of a right in a Breach, & is allowed

to sue in his representative capacity, B. & C. 5 a, 1 B. & P. 84.

It has been a general rule laid down that an alien enemy

Pleadings.

Correctness of a Plea P^l is, pleaded as to her ability
to that. If the Plea is made alone without joining the
answer it is a good cause of plea to her disability
But when the Plea is joined with her answer it cannot be pleaded
See the plea 24. 1 Bk 443. 3 Lb. 631. Co Lit 132.

But this plea is pleaded only in abatement. it is no plea
to the action. It denies merely the legal capacity
of the P^l to sue. 3 Lb 631. Co Lit 124. See also P^l 24.
ended

Whatever can be taken advantage of by way of dilatory
plea cannot be alleged in any subsequent stage
of pleadings. 6 Lb. 766. Co Lit 124. Fek. 2.

This is a general rule. The principle that it would
be unreasonable to proceed in the usual way of pleading &
affirming at a subsequent stage. plead a dilatory plea.
& if a term has been commenced and answer entered
while it is pending her counter may then
be pleaded to her disability 1 Bk 316. See also P^l 24.
In this State this last rule of the Ct is abrogated by
stat. for it is provided that when the Plea is made
pendente lite the Plea may appear in Court and
answer to the action.

Another ground of Abatement is that the P^l is an Infant
sueing without guardian in view of his age. A minor
sueing alone, he cannot appear by an attorney. 3 Bk 301.

Rev. L^{ie} 135 b. Cont^d 123.

Dec 135 b. Cont 145. V
 If a Defect Off ever also and being just is held
 with again's hand a for then the just is erroneous
 on the part of the record. This whole of error is called a
 writ of error. ^{2. gave} ^(the writ 16) ¹⁶ ¹⁶
 be lost in a higher Ct provided that Court can be
 beginning of matter of fact. If the Court has no cognate
 of matter of fact the writ of error must be lost in
 the Court when the Defect was made, 2 Lard 213. n. Co 84. Cont
 123. Co 424. - There is a single point that if the Defect
 others just it is not erroneous 441 of Co Law
 By the Stat 21 Jan 1. This rule is void when the Defect
 occurs just unless his Defect is not allowed.
 in other words, if a Defect does occur and occurs just
 in a certain way the just is not erroneous. * By Stat
 4 then the rule is extended, so that if the Defect occurs in
 just with a verdict, confession, and debt, a non sum
 in judgment. (a) But if just ever is his L any erroneous.
 2 Lard 213. n. Co 84. n. 2 C. 182. Co Law 580.

It is a good place to the depositing. There he is not in the
 Com Des about 2 16.-17. But the abate. 4. 1 M's 302.

It has been suggested as a question whether this fact that
the Dyer was not in the line of fire at the time of the shooting
must be pleaded also to the action. Alleging it may be pleaded
to the action as a dilatory plea. 1 B.H.P. 44. I should think

* I.B. it is not necessary if the dipability is not needed

(a) it is not erroneous.

For where there appears no cause of action whatever ^{even} at the beginning of the suit.

Plea to the defectibility of the P^{ly} entered to the harm of the P^{ly}. I. C. by joining "Injunction of the 1st of the P^{ly} only to be answered." 3 Blk 303. Ha. folms. vid. 1 Ha 585. Same, 103. 109.

The last class of ^{pleas} dilatory are strictly called

Pleas in abatement

The term of abate. in Law denotes prohibition. Abatement as in the case of a nuisance Co. Lit 134. b. But the P^{ly} of 11 Pleas in Abatement generally extend to the ^{whole} and to the whole only. Pleas to the Jurisdiction of the Ct. do not go to the whole, they deny the P^{ly} & go to the whole. 3 Blk 304. 303. Salk 298. Calk 171. Niles 478.

But it is not universally true that a Plea in Abatement extends to the whole only. A Plea in Abatement is in some instances proper to the Court. A Plea which goes to the whole is universally a plea in Abatement, but a plea in Abatement does not go universally to the whole, but it may in many go to the Court only. Thus if the defect is misnamed it is a good ^{plea} in abatement, & it may go to the Court. A renewal between the dec. & what is good ground of plea in abatement here the plea goes to the dec.

Of Pleas in Abatement.

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The reason between the instant Countd above and that
appearing upon the declaration is good cause of plea
in abatement — Doctrina Plurimorum l. Com.

See Acta N. 12. Abat. l. 9. 1. 3 N. 301

The Defendant with

In pleas of this description the utmost meaning & extent
is necessary and the least meaning a defect is
fatal. This is because Pleas in abatement are not favored unless
they are obvious in one sense. Pleas in abatement must
be certain to every intent, 10 Mod 208. Co R 82, 84 C. 16.
2 Hen Blk 530. 10 Mod 208.

Thence it is a rule that every plea in abatement must raise
the Df's a better writ. 2d Reg 1117. Com Dig Abat. l. 1. 2.

The meaning of this proposition is not given in any of our
Books. —

Now by this rule is meant that it must be so pleaded
as to enable the Df to answer more to the defect
and avoid the mistake which is the cause of the Plea. Thus
in a plea of Misnomer, he must not state that his name
is not John. &c. This is not good notwithstanding his true
name. "The 16 Df is used by the name of John which is not his
& this rule holds generally of pleas in abatement 3.

Cases of Abate^t are numerous. They may be either
 Extrinsic or Intrinsic, or as is frequently called. Intinsic,
 1st Misnomer. A want of addition in name of Abate^t
 The misnomer of the Def^t is given of Abate^t where the
 mistake is in the writ or declaration. 1 Felt 7. 3 Bk 302
 Bui v. Meas J. 8. 3 Felt 167.

Misnomer of Defendant

This is good & plain in Abate^t where the Def^t is not correctly
 named in the writ or declaration.

And by the Eng^l Law a want of addition is good ground
 of Abate^t. It is here when it is necessary for descrip-
 tion -

The word addition means title. Thus ^{estate} degree this plain
 of Abate^t is Key^r. Eng^l 400. 1st Felt 167. This is agreed by the
 1st Felt 5th which enacts that this descent must be found
 by way of continuing this that is called the Stat of Addition.
 3 Bk 302. 6 d. 10. 5. Cont^d 14.

If the Def^t is described with his proper name, his degree
 or title & with the Def^t present or late plain given
 it is sufficient. A third rule of pleading is by
 and his or great person called this plain of want
 of addition. J. 6. as far as it is necessary in the writ.
 This plain by this master is totally excluded. Because by
 the rule of C. 6. the Def^t cannot obtain the writ in any
 1 C. 400 2 C. 383 B. & P. 345. 1 Felt 318 n. 3

This Rule extends only to personal actions. Criminal
appeals, an indictment and not to real actions
it denotation of the person of the Deft in real actions
is sufficient. because in real actions the description of
the land is given — C. Mod 85. 3 Ba. 618.

But at C. Law neither want of Addition, nor Misnomer,
was pleaded to to an indictment for Felony. However
the Stat of Hen 5 extends to indictments as well as civil
actions 2 Hawk 186. Cro Car 114. 4 Burr Pleas H. 3.

The same Stat. that the plea is abet. may be used
yet it can be of no benefit to the prisoner, for it is
in the power of the Ct to confine him until a new
indictment is made out. 2 Hawk 176. 28²³⁸ 11th 243.

A want of additional pleader is abet. a fortiori
a mistake in the addition. here if Exr. is given instead
of yeoman, a knight instead of gentleman it is pleaded
in abatement. Comb 65. Ld Ray 1014. 3 Bk 302.

In real actions the exact degree of title is not material.
By C. Law no exact of degree was necessary to be stated
only in the case of a Knight's being sued.
with in a Court. The only addition in real actions is
that of the Defts abode. By common custom the title is
pleaded mentioned.

But when one is sued in an office as a representative
against the Executors or Administrators in which he is sued
must appear as well in one person as in any?

This must be, otherwise there will appear no case
of action. This rule is not made as necessary by way
of addition, but to decide the character & extent
of 2 Ben 84, Carth 301-2. See also P. H. B.

But when any description of this kind is not necessary
it is mere surplusage. as If a thief were sued
upon a prom. note given in this individual capacity
it declares if he is decided as Thief. &c. It does not
necessitate.

See P 383, 3 Ben 621. This means,
that when it follows, then when a wrong description
of this kind is given it hurts not the plea, in fact,
as If it is joined is apt & Butley in the case of
J. L. here the it is not the true plea of J. L. It does
not vitiate.

2^d The misnomer of one or more revenue Dept. is not
pleadable by the other A & B are joined and it is mis-
named. B cannot take advantage of the misnomer
for the person misnamed may answer the name
if he chooses. The same rule holds as to wrong
additions. See P. H. B. It is a question whether a writ abated
as to one of several co-defendants is abatable in toto. See also P. H. B.
8 Co 154, b. Carth 96. 3 Ben 625. See also P. H. B.

If it appears that the cause of action is joint & not several
It seems the abatement must be in toto. If the liability of
the Defs. are several I see no reason why the writ
of abatement should be abated in toto.

There is a particular mode of pleading nonconcord,
it is not enough to plead that his name is not that
by which he is sued, but he must state what his name
is & he must state further that "he was known &
called by that name"; nor is this enough, he must also
allege that that he was known & called by the name
by which he was sued. This shows the great certainty
which is required in pleas in abatement. *Falk 6.7. 4 Allen 396. 2 Ry. 118.*
249. Miles 544. Bar Ab. Pl. 4.3.

And when he begins his plea he must begin it
in his right name and not in that by which he
is sued, as *J. Thomas Tines* nor when the Off. has been
not a writ as *John Tines*, 5 Ry. 487. *Cart. 307. Comb 118*
2 Ch. P. 47 & 418. 1 Lilly's entries. 1.

Of Nonconcord or not so advertised can be taken
except by plea in Abatement, this does not go
the incist. The Def. cannot say for ever that
he might have pleaded in abatement. *Bar Ab. D*
Y. 3. Cart. 124. 1 Falk 2. 6 Ry. 166. 2 Ry. Blk 267. 297.

If one executes a specialty by a wrong name it is
good with respect to the name used by that wrong
name and that his true name should come
under an alias. *The 1218. 1 Bull. 216. 3 Bar. 617. -----*

Pleadings

This never appeared to me to be a correct principle. The correct course I should say would be. To save the obligor by the right name and state that he executed the deed by such & such ~~and~~ ^{and} a name. But a mistake in a depts Christian man with a pleading an executor an ~~extraneous~~ ^{extraneous} is said to be fatal in the Book. Let come to this again many logical reasons. This rule is not truly stated Co. Lit. 3. 5 Co. 49. 3 Bur 606. ⁶¹⁶ Cas 889. Cas In 558. according to these authorities the Defendant is not bound by a wrong Christian name. ~~and~~ ^{and} can there be an "alias." But at the present day

If one gives a wrong name or baptism in an action as a plaintiff contracts a few a tort. The mistake is indeed fatal to the writ. But if one executes a specialty by a wrong name he may be sued by that wrong name. & if he pleads to that in abatement the Plff may reply that the Dff was known & called as well by the name in the deed as the name which he calls, namely, ~~now~~ ^{now}. & by proving the execution of that deed. The Dff cannot reply. Willer 554 Cas 889. & 3 Bur 616 1 Ch. R. 440 Stra 1218. But where he executes a specialty by a wrong ^{Christian} name & he is sued by his right name ~~only~~ the mistake is fatal for this makes a variance

a If he is used by a wrong Christian name & the
right name is used under a 'alias', is proper for
the Christian name cannot be stated under a
alias. This more technical rule originates from
the great sanctity attached to the Christian name, from
the holy ceremony of Baptism. I see no reason for
this peculiar kind of logical reasoning.
The whole should always be kept clear of the
depts by their proper names. If A.B. & C. are
partners by the name of A.B. & Co. they must not be
sued by the name of A.B. & Company. But all their names
must be alleged. The opposite. A.B. & Co. is sufficient
A.B. & Co. is arbitrary & therefore no name will be good
if they are decided in the 1st instance A.B. & Company - It
must be "A.B. & C." 8 76508. Leedes Case, 240

But when a corporation is to be sued it must be
sued by its corporate name. for its corporate
name is its only name. The individual cannot
be sued separately. Local 244. The individuals in a corpⁿ are not
By Practice in this State when a corporate
is made, as of towns. here if the town of Litch.ⁿ is and
the following method is adopted, then A.B. & C.
The select men and principal inhabitants of the town of Litch.

Pleadings

When a Deft is sued by a wrong name - it is not
sufficient that he should plead non est in abatement
he may waive it. So if judgment is awarded against him
and he is afterwards sued by the right name,
he may plead the former in Bar.

Bore Mr 81 43. True 1218.

Memories of the Slavegirls,

The question of the Pff may be pleaded and the
 vice holds to Pff: as well as Defendants. 1 East 542
 If then the Pffs answer is pleaded by the Def. & the
 Pff pleads that he is Answer as well by the name
 in which he was sued as any other is good in Law
 But he cannot prove the facts of the replication
 But a wrong addition ^{given to the Pff} cannot be pleaded except
 as to common law. If the Pff was a yeoman
 and describes himself as a Gentleman, this is no
 plea at all is abated, because such was addition
 was no ground of abatement at C. L. But if the
 Pff had filed himself Knight when he was a yeoman
 it would afford ground for abatement. For the C. L. takes notice of rank
 The reason is that the Stat. 5th does not extend
 to Pffs. & that as the Pffs sue on his own writ
 there is said the submission that this country is
 sufficient for the Pff, 2 Roll 469 6 Mod 85. 3 Burr 617, 618.

In this State a very description of the Pleas alone
is pleadable in abatement. Because a very description
may give a guess the time of the action when they had no ^{right}

3. It is a good plea that the Def^t being a sole def^t,
is a Single Cor^t. This is a good plea in abatement.

But see Plea 2. 3.

But if a Female sole Def^t sues in "pendente lite"
she cannot by this act defeat the suit. When
will not ^{allow} her own voluntary act to defeat the
suit. See Plea 323. Esp. Dig 328. Hen 811. Bar. Abat. 24.
La Raymond 1525.

But if a married woman would waive her use
of her contract she must plead in abatement,
and cannot plead it to the action. If she neg-
lects to plead it in abatement she waives the privilege.
If the court is given in judgment this is a waiver,
then can be no plea in abatement after a general
verdictance — Latre 24. 32 R. 627. Com Dig. alt.
4. 2. Case 124 1 Ch. P. 437. 470. Then to prevent surprise
I would observe. That when a married woman is sued
upon a contract made by herself and her coventor
she may give her Coventor in the gen. issue, this
is here allowed because the contract is void. W. H. H. H.

The must plead, if she is a female sole. The Coventor
in abatement. But if the parties to be held it in abatement
husb? may still appear and plead it in Bar in
any stage of the proceedings & If judgment is granted

Headings.

and verdict obtained. The husband being a writ of error
 quoniam veritas

346631 Bar Ab Pl. 131. 2.

5 Geo. 4. 681. Lalk 400.

The reason of this rule of the right of the husband is, that
 the wife cannot reside inside the right of the husband. in case
 a case the wife of error must be close by the husband.
 & wife. the cannot then the wife in husband in error.

2 Geo. 4. 16 & 19.

That two debts being together as the husband and wife are not
 husband and wife is a good plea in abatement.

And the husband and wife two debts. who are joined by the husband
 are not husband & wife is a good plea in abatement. Lawes 105.

This rule the queen mentions any qualification is
 not universally true. for under the title of husband & wife.
 the husband. defendant may be submitted to the husband. the
 debts may join with his wife. I do not know how
 he can acquire a right defendant to join with the wife
 the this is often allowed Com. 473. Bar Ab Pl. 131. 2.

It is no plea in abatement that the debt is a profit
 and without guardian. in such case the Court will
 give time to remove his guardian if he has one &
 if he has none. the Court will appoint one ad litem
 and this every Court of Justice can do Co. Lit. 89. 135
 5 Co. 53. B. 3 Bk. 427.

3^d Another cause of abatement, is the death of parties
 At C^t Len of a hol P^{ff} a vol D^{ff} died pendent
 lite, the heir abated & died with estate of the parties
 and judge in case similar common law case of quon-
vobis word in 10 Co 134 Co Lⁱ 138, But Mr M. 44
 This rule of law must be less by the Ex. dead. if
 the judge is rendered is the dead person But if Judge
 is rendered for the decedent party in dying "pendente lite"
 the will of law may be less by the survivor as
 the representatives of the decedent. Cuth 338-9. Regd 59.
 3 Bar 218.

So also if one of several P^{ffs} died the heir at C^t Len
 abated. If then an action was levied by A & B vs C
 and pendent lite A or B died that act. for by joining
 in the action they assert a joint right. This joint right
 is destroyed by the death of one of them. So this case
 there was an exception in several actions after
 summons & severance. If A & B had a joint right
 of action and B refuses to promise, there is a summons
issued to B & if he then refuses to promise there is a
severance ^{accorded}. If after severance the P^{ff} died the suit
 does not abate. 10 Co 134. 5 d 20. Doctrina plurium
 ad instum B & 4 1 Bar 7.8.

Pleadings.

at Can. Law if any several Pffs die the suit abates. But
 if one of them dies the suit at Can. Law is in
 that the suit should not abate, in such case the Pff-
 had one, to make an entry of the death of the Def. & proceed
 as the survivors. Ballou 249. Br. Ab. Pl. 5, 1 Bar 8.

The reason why the rule relating to the Pffs does not apply
 to the Defs. I take to be this, when two Pffs
 join they assert a joint right, but in the case of Defs. there
 is no assertion of a joint right. They may sever in the
 defence &c.

Now by 17 Geo. 2. s. 8 & 9 M^o 3. the execution of the death
 of parties of abate is in a great measure removed, for
 here in this State a similar Stat. and with some
 exceptions. In Reg^d 18th when there are several
 Pffs and one of them dies the action does not
 abate provided the cause of action is of such a nature
 as would survive to the survivors, so that now by this
 Act^l practically almost every case there can be no
 abatement for in almost every ^{case} there is a survivor.

2^d When ^{one} of several Defs dies pendente lite If the Cause
 of action is such as would survive to the survivor
 the suit does not abate. This seems suggested
 as regards the suit proceed, thus the Cause now stands
 as before.

2^d If a sole Pff a def. dies pendente lite ^{in case} ^{of}

in which the right of action would accrue a minor to the L^y. The suit does not abate, provided the P^{ff} dies after interlocutory judgment.

So If a D^{ft} dies pendente lite when the cause of action is over as would survive as the L^y and the suit does not abate. provided the def^t dies after interlocutory judgment.

Our Statute is now amended, for it says nothing of interlocutory judgment. So that if the P^{ff} or D^{ft} dies when the cause of action would survive for against their representatives, in any stage of the proceedings the suit does not abate. *Id. 115. Bar ab Pl. 75.*

There are rules relating to sole P^{ffs} & sole defendants. The mode of proceeding when a sole P^{ff} dies, the representative enters his own name and suggests the death of the P^{ff}.

on the other hand when the sole def^t dies pendente lite the officer a G^o for requiring to know why the writ should not proceed as before, and must be had Yollen a C^o 442 to 444. Bar ab Pl. 75. There are numerous Statute provisions, but there are clear reasons. The P^{ff} acts voluntarily if it is supposed that the representative will proceed voluntarily. But when the D^{ft} dies it is not supposed the representative will voluntarily appear & enter his name. There is a supposition cannot not laid down, with Black. which I will mention.

Pleadings

Suppose 2 P's die at different times pendente lite (die) what is the proceeding. I mean in the If it dies first the case of action remains ^{to} B, & on B's death, to B's representative solely.

So in case of 2 Depts. A & B. If A dies pendente lite. the action remains against B. (if the action can remain in any instance). & If B dies the suit remains wth B's sole representatives.

Real actions still abate generally in the case of Sole P's or sole Depts. For then action thus being abated, for & wth the personal representatives, do not extend to Real actions. But Real actions are within the Statute when one of two or more P's or one of two or more Depts. dies pendente lite. Co. Lit. 134. Cr. 8892, 1 Bar 7.9.

4. Variance is a cause of Plea in Matrimony.

If the dec. varies from the writ by O. L. it is a ground of abatement. If the writ states a dec. but the dec. is not "debt" and the claim is not a debt it is a variance, 1 H. Bl. 249, Bar 16. P. 16.7. If there is a variance between the countenance and issue and the description of it in the writ this is also a cause of abatement. 6 Co. 14, 2 W. 232, 4 H. 314. 316, 1 B. P. 87.

When there is a variance between the writs and deced

Of Pleas in Abatement.

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where and a description of it in the declaration advantages may be taken of it in various modes.

The usual mode in Eng^d is to take advantage of it under the gen. issue, occurring a non-mist. It is by no means the only mode. It may be pleaded in abatement. & this is one of those few instances in which the plea is avowed. will go to the Decⁿ. 1 Inst 154th.

For 640. Com 266-7. 4 Y R 612. 687-8.

In this State the usual mode is to take advantage of it by a plea in abatement. tho' the facts can arise limited of it under the gen. issue.

Doctrines pleaded under 1. Com. Dig.

Abatement, § 1. Action, n. 12. Talk 648.

There are two cases, then 4 differ^{ways} in which an advantage may be taken of a variance between the instrument declared on & the description of it in the declaration, viz.

- 1st The exception may be taken by plea in abatement.
- 2^d By objecting to its admissibility in evidence. Tho' if there is a variance that is a variance in substance, and the evidence does not coincide with the instrument declared upon.
- 3^d The Exception may be taken in evidence under the gen. issue. I. E. the D^y may contend to the jury that the instrument, adduced does not support the issue.

4th Answer may be taken by the D^r in reply
 upon of the writ a instrument existing in copy &
 denouncing to the declaration. 1 Term 317, Com
 Dig' Pl. § 3. Long 208.-13. 2 Wils 339 2 T^{er} 1146.

Under the Head of Answer I believe the answer
 could be plead only in abatement.

But when a return is pleaded, answering a return
 answer can be taken in either of the above
 forms, but not for the reason of the return
 but on account of the answer. So if John Doe quires
 what is described in the declaration as being John Roe. here John
 Doe may plead nonnomel denying the name or he may
 admit the name and plead in abatement on any of the 4 methods
 and then that the declaration varies from the instrument
 addressed.

4. T. R. 612.

The 5th Ground of a return is the non-jurisdiction or mis-jurisdiction
 of the Court.

But the form is similar a P^l & the point and non
 jurisdiction of D^r differ in principle.

Of the non-jurisdiction of P^l & 3

1st If we pass jurisdiction when the claim of action
 is in 2nd name the non-jurisdiction of the court may
 be pleaded in abatement.

and the rule is the same when the sum of action is not voted in his plea but in his father. The remedy always belongs to them in such suits. The case of action Co. li. 164. a. 189. a. 195. b. 198. a. 1 Salk. 4. 7th 243. 1 Salk. 291.

On the other hand If two or more persons sue a joint or copious plea when the error of action is in one of the only the surplus of the other may be pleaded in abatement & this is common at Co. E 143. 1 Head. 315. 1st 72.

There are some cases in which the non joinder or misjoinder may be taken advantage of - not by plea in abatement, but even the plea is also upon Oyer & Demurrer or on motion in cases of judges. There are few distinctions in which the law has been discussed, either by doct. or by reports this principle -

The question is in what cases may the joinder & nonjoinder - of parties be taken advantage of and the general rule of plea in abatement is -

1st When the objection of joinder or misjoinder involves a demand of the dec. or any material allegation - ^{any part} - may be taken with in abatement, and the gen. issue. In others involves a demand of the dec. goes over and is in substance of the gen. issue.

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In other words, that when the first that can return
 should have been joined as Pth is intended into
 an entire agreement in the due administration
 may be taken of it under the given if the Pth
 objects may be taken to the contrary. I need not be
 placed in a doubt. What if it is an act of ^{on} consent
 when an Pth should have been joined. The Dth may
 the administration of it under the given if it is
 an object by demerits, as is I then should be
 may take administration of it by being in abatement,
 If two or more Pth may be entered with the
 right of action is in an the rule is the same

1 Am J.R. 75. 2 Tra 820. Peck v. E. 205. 2 L.R. 282. Bul N.P.
 152. 1 Saunders 291. F. & G.

I would there no advantage can be taken by offer and demer-
 its unless there be an instrument in writing—

all the rules require representation whether in bond given
 to A. & B. & A may alone have the Dth may plead
 non est factum, for A was in a bond given to
 himself by the Dth. and the instrument varies from the
 an added upon

or suppose when a bond given by A. to B. alone & B. & C.
 declare upon a bond given to them, then A may plead
 non est factum, for he has given no bond to B. & C.
 and the declaration varies from the instrument advanced.

in abatement. 5 East 407. Peake's Ex 205.

But if two Offences even in Tort and the right of action is
in one only advantage may be taken of this
misjoinder either by plea in abatement, or under the
general issue. See here the objection does not
arise from the general issue. This point was decided in the
State in the case of Leary vs. Burns, Cas. L. 143. 5 B. & C. 200.
Where two Offences under a joint right they were once
allowed unless when proof of a joint right.

If one Party avers of a chattel given, alone for a tort
committed when it is the defendant does not plead in
abatement then must of course be answering hostile
the other party and may recover in damages. ^{also} suppose
A & B are joint owners of a Chattel & A alone sues
D. for taking him away, now if D. does not take
advantage of it by plea in abatement, B may also
recover of D., though D. under the general issue. 7 B. & C. 279.
1 B. & R. 116 2 id. 536. (622) gives in evidence of the
claim of the other party and thereby takes for merits in
damages. But to prevent a recovery the party must
plead in abatement.

177 Joinder or Nonjoinder of Defendants.

When the facts before the Court are such that a nonjoinder goes in decline of the declaration advantage may be taken of it by plea in abatement.

In pursuance of this principle it follows that if one of two joint debtors is died alone in Court the nonjoinder of the other must be pleaded in abatement, as it is said there is an exception to this rule when it appears on the face of the dec. & when the party alleges that another party should be joined. 5 Burr 2011. 2 Blk R. 947. 5 T.R. 657. 1 Saund. 291. d. n. 4. 291. h. 2 A.B. 365 1 H.B. 236.

By the mechanical strength of memory it is impossible to view the distinction that may be easily indicated from the principle.

The rule has been said to be the same when the action is "ex quasi contractu," there is an action as a carrier, charging negligence & breach of trust, 1 Saund 291. d. n. 4. 6 T.R. 369. 2 A.B. 365. Carth 62-3.

It is true in the case of nonjoinder of carriers that it may be pleaded in abatement. But it seems now that in such an action "ex quasi contractu," the nonjoinder of parties is not pleadable in any form, for it is held that the gist of such action is Tolt & not contract, 3 Carth 62-3. 70 5 T.R. 649. 651. Salk 440, contradicts.

-This rule that the nonjoinder of the 2d party must be pleaded in abatement, as supported by the plain authorities, but Tolt is not law.

Pleadings.

Suppose A & B join in making a bond & C is used as a surety. It may be pleaded that the mortgage is absolute. But under the plea of non est factum he cannot prove the non-joinder of B. He must be pleaded in abatement, 5 C. 119, 2 B. & P. 950. 1 B. & P. 42. (a)

And whenever such a mortgage is pleaded in abatement and a new suit is brought including as debt. The party defendant in the former this new debt is at liberty to plead in abatement that another debt exists to have been joined. But that debt is lost in an unit made the mortgage of the other debt comes in a second action including that other debt. Plead another mortgage of an other debt is not.

But by way of exception. If it appears from the Dec. a plain case part of the debt is pleaded that another debt exists to have been joined. advantage may be taken not only by plea in abatement, but by demurrer or objection or motion in arrest of judgment for such is required by 5 B. & P. 2614 6 Y. & K. 769, 1 L. & C. 291, B. & C. This is a case which can never happen -

As to misjoinder. If two pleas are made in Court tried by one of them ~~of~~ the misjoinder may be pleaded in abatement or it may be pleaded to the action. 1 Inst. 48. 2 D. & J. 272. 2 A. & R. 454.

In this case the plea showing the misjoinder goes in abatement.

(a) The plea of non est factum denies the making of the bond, but it does not make the bond. It does not go to the denial of the declaration, therefore the fact of the non-joinder of B could not be given in evidence under non est factum. It abates the suit. It would be inconsistent.

of the declaration, so that the defendant may be
safely pleaded: if he declares upon a certain ground
by two he fails if he does not have a joint em-
ent as two, in sum a case of a verdict is found
as one of the Dpts. & for the other, joint cannot be
had as either, for then the verdict follows the dec.
3 Burr 62, Co Litt 361, 1 Keb. 284, 5 Esp. 47.

But if 2 persons are sued together for a joint suit to
be committed by both of them & it is found to have
been committed by one of them only, there is no
misjoinder in the case. Mijord is now preside
of Dpts in York, in an action sounding in tort one may
be acquitted and the other found guilty. But in actions
sounding in contract as two a case, an error or be
acquitted & the other innocent in damages The 883,
508, Esp. Dig 336, 5 Co 159, 5 W. 646.

In actions sounding in tort when the fact is committed
by several ^{jointly} one may be sued alone & the others released
a very common case, then the whole or the whole, is
that in York there can be no misjoinder. In tort
there is a licence at the election of the Dpts. that is a
general rule. I cannot think of one exception to
this rule. — When two persons are sued in York
arising out of their joint interest in real property the
suit must be joint. If A & B. are bound to deliver
wheat and by reason of their neglect another party

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It is not necessary for the maintenance of this action that the first action is actually pending. Doctum Plurima 10 Bm Mr Pleas 107 G. 11.

It is a point after evidence on Cts. That when the first 2 suits must necessarily be inconsistent it will not abate. The second suit. This is agreed to C. L. and. The second suit is not vexatious. Its object is to obtain what the first action could not obtain & appeal.

When the same principle when the first action is undiscovered. 1 Rob 365. 562

In deed I conceive there a tendency of a person and will never abate a second suit when the second is not vexatious.

This is a good plea when the first action is against one and the second action is against two. As if a husband is first B & A & husband for the same injury is then A & B. In the first abate as to A. & whether it abate as to B it is a point unsettled. See Mr F. 11 Rob 137 Coste 96-7. The learned of opinions of authorities now found. That it abates in toto, but this is contradicted. That 71. I conceive the second suit should not abate, as to B that it undoubtedly would as to A.

On the other hand if one of the Dfs in the first action is omitted in the second action the suit will abate.

Pleadings

suppose in the first the 1st writ is in A & B. and the 2^d writ is in B only. Then it is clearly vexatious. Cases 46-7. B in Mr. P. 411. Holt. 137. 138 in 13-14.

There is a class of cases in which neither of the last rules would apply. I. e. when a new debt is added to a new or omitted. I have no reference to interests or contracts. Now if an action on Contract is there is 2 debts. But the Poff discards that one only is liable to new count. A new action against the one only null.

If the second action is commenced on the same day of the commencement of the abatement, & discontinuance of the first. The 2^d writ will be issued. It has been commenced after the abatement, a discontinuance of the first. B in Mr. P. 411.

But it is no cause of abatement. That is the action for the same cause is pending before the same Poff is a thing. The first action is A cannot at all affect B. This is not vexatious & is only exercising a legal right. See 428. Holt. 137-8.

But a perjury of a prior indictment will not abate a second indictment, as the same person for the same thing. The Ct. has the power of quashing the first. The Ct. has a rule of discretion regarding the indictment. But the pending of a prior indictment will abate the 2^d. Then the Ct. has no discretion.

Readings

in abatement. If a writ moved the return is only not within the time limited it is good ground of abatement.

As 850. Lalk 63 2 Kelt 471

If the return made by the Sheriff is insufficient it is good ground of abatement, but it must appear upon the writ as if 15 days were allowed to return and the Sheriff ante-dates him the Doff cannot falsify the return. The Sheriff's return is conclusive evidence but the Doff cannot falsify the return by pleading it is abated, yet he may have an action against the Sheriff for a false return.

1 B.M. 16393. 2 Taw 813.

This principle of C. Law in this matter has been rejected in this State. here if the return is in fact false the Doff may take advantage of it in the writ. he need not have recourse to the action for a false return.

10th Warrant of Venue in the writ is good ground of abatement by venue is means vicinage, vicinity a village in which the act was done. 7 Y.B. 243. 5 Bar 322. 2 Ch. P. 529, n.O. Taw 694. 1 Taw 82 n.3.

There is sometimes action the venue need not be truly laid, but it must be laid, that it may be brought before the proper judge by C. Law. the Doff was bound to lay his venue truly, for originally a fact could only be tried except by the jury of the vicinage where the very fact occurred. but this rule does not hold the venue in transitory actions now is more certain 1 Den 25. Lalk 668. Com Dig ac. N.13. Comp 510 3 East 329 Taw 74

But this in truncating actions the venue is not truly stated as a good of abatement, yet by mistake the Ct. may order the venue to be changed, in error;

But in Local actions a false venue is good cause of abatement. For a local action must be tried in the courts in which the cause of action arises. 1 Bos 34. 7 Co. 2. 3. Com Dig Abatement, H. 17.

In what are called truncating the rule in this State differs from the Eng. rule. our rule is that the action be tried in the county where one of the parties to the suit resides. If the action be tried before a Superior or County Court. But in one of Justice's courts, the action must be tried before the Justice of the town wherein one of the parties to the suit resides. But as to Local actions the rule here is as the rule of the Common Law, respecting the venue.

11th That the action is Misconceived is good ground of abatement. This is not unusual for it may be taken advantage of at a trial, by demurring a motion in arrest of judgment. Com Dig Abat. P. 5. Hd 579. Lave. 106. Yet 199. This is a very rare plea to an action misconceived.

12th That the Cause of action had not arisen at the Commencement of the War or the issuing of the writ. In the issue of the writ is given. The Commencement of the suit. This is also a good plea to the action. If it does not hold the writ bears date when by the terms of the instrument it had not been payable. Also Com Dig Abat. P. 6. ac. C. Ca. 114. Co 8325 it may be pleaded in abatement, or to the action.

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See 584-591. Law 107. The distinction in this subject is very artificial I write. But according to the character of the plea just is given. It determines the nature of the plea: according to this last rule, you will find that when the plea begins & concludes alike it is characteristic of the plea's nature.

But if a plea begins in abatement, & concludes in ^{Bar} (abatement) or begins in Bar & concludes in abatement. This rule does not apply. If the matter which goes only in Bar begins or concludes in Bar. The plea is one in Bar. Suppose the matter in the diff. pleads a plea now in part a plea of the plea begins in Bar and concludes in abatement, or begins in abatement & concludes in Bar it is a plea in Bar for it is determined according to its subject matter, the beginning & ending notwithstanding that the matter seems to be tied to the subject matter to determine Bar J. 12. 2d Reg 593. 1018. Called 303

If matter which goes in abatement only begins in Bar & concludes in abatement, or conversely, it would seem that the plea seems to be one in abatement. This is the case with an exception, viz. If the plea is found as the diff. has a plea in Bar and just in chief goes as before. This exception is founded in policy to discourage, dilatory pleas. Suppose the diff. pleads murder being a plea in abatement, by beginning by proving the fact of the act & concluding by proving the fact of the crime, now here if just is found as the diff. it is a plea in Bar and goes in chief. But if against the diff. it is only a plea in abatement.

1 Bar 1 Law 311-12. 1 Ch. D. 445. 2d Reg 1018.

Pleadings

1st general rule is that the character of the plea is determined
according to its beginning & conclusion.

But when the plea begins in Bar & concludes in abatement,
the subject matter governs and determines.

So if matter which is only void is abated, it pleads
by beginning in bar and concluding in abatement, according
to the subject matter governs & decides, the character of the
plea except when it is found in the Deft.

There are some defects which may be pleaded in either
of the above ways as in case of an Outlawry.

If the matter pleaded is good both in Bar and in
abatement, & the beginning & conclusion of the plea differ
the Jst may treat it either as a plea in abatement
or as a plea in Bar, & this will be treated according to
the Jst's answer, 3 Mod 281 1 P^{er} 136. Bar & Ab. Pl. 412.

as to the beginning & conclusion see 3 Ld Ray^{3d} 57. 92. 107. 116.
2 Ch R. 7th Pl. abat. & plea in Bar. So that the Jst has it in his
power either to consider it as a plea in Bar or as a plea
in abatement.

The Jst may plead the kind of several pleas in the
order of unsuccessfull, he may plead in order 1st to
the Jst, 2^d to the person, of the Jst 3^d to the person
of the Deft. 4th to the cause & dec. by pleading in abatement
5 to the writ. 6th to the action of the writ.
abatement includes all except the two first. Bar & Ab. Pl. 412.

But the Defendant cannot plead at once two diffe-
rent pleas of the same kind a two different causes.

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of abatement, to the whole or some part of the writ.
as two dispartments to the power of the Jd in "Cave-
ture, & Cuddawez". In one of the cases a case made
will cover the end of both. The common plea is Two
pleas in 2 dispartments in Cuddawez. It covers an
answer all the purposes of another. Cuddawez plea is
A Buckenup together.

Ind. Key 183. Cuddawez 183. Ind. Key 183. Ind. Key
admission 6. Ind 250. Co. Li 304. s. Ind. Key 183. 3. 4. 5. 6.

Ind. Key 183. 3. 4. 5. 6.

The reason why the Jd cannot plead two causes at the
same time is, that one cause will answer. In this
that I drop the Jd may appear in the plea of abatement
any number of causes. Thorp's Pleas 60. Ind. Key 183.
This practice from Ed Coke's observation, the opinion of Jd Coke was
unconcerned tho, yet such is the practice, of Court & Jd.
When a cause of abatement is pleaded and ^{partially} denied
and it is then is as prejudicial of that part as well
as of the part. That error cannot be that the of-
fense part is denied. because ^{the party} against whom a plea of
abatement is pleaded may there prevail.

Pleadings.

But mere matter of defect is no ground of error in
 App if it is pleaded in abatement, for all matters of mere
 abatement is waived unless it is pleaded in abatement.
 6 G. 766. Direction Pleas ad interim. Earth 124. Civ C 554
 But there is no prejudice of error matter
 as will go with in abatement a in bar such matter
 is not waived by not pleading in abatement. Otherwise
 for there a plea is a perfection of right of action in
 many cases. The Deft may have been misled it is a
 dilatory plea yet ^{in many} times leaving it to the action
 afterwards. 2 Ry 594. But Mr Mass J. 4.

It is a rule that to a defendant on a plea the Deft
 is not allowed to plead any thing which he might
 have (had) pleaded in the prior action. It would be
 very unreasonable to allow him. But Mr H. J. 135. 1 M. 2.
 310. 3 G. 689. 1 M. 258.

A writ may be abated in part and yet stand good for
 the residue. Suppose that the Piff dies debt in two
 bonds then the Deft. may plead the non joinder of a
 necessary co-obligor & defeat the one. yet the other is a
 foundation of recovery 2 B. & P. 120. Linn 105-7.

A Deft. may plead sometimes in abatement as
 to part of the Piff's debt and and in bar as to the
 residue (in part).

This rule holds only when there are two or more causes
 of action in the dec. or when the action is founded
 on two or more causes, ~~as to~~ as to one cause
 and only one. the defendt. cannot plead in abatement and
 in bar to the other part of the same cause.

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A Plea in abatement does not go to the merits of the cause. though a plea upon it is no bar to another action for the same cause. There can never be an issue when a formal plea may be pleaded upon a plea in abatement. 4 Co 43 & 6 id 6.7 Bar at N C. 3. Com Dig ac. L. 4. 8 Co. 37. 6. 98.

As to the manner of tendering a plea.

There are three modes as follows (viz)

1st When a plea is given for the Def. the plea is "that the writ be abated" or "quashed" tho when the plea goes to the Dec it is "that the dec be quashed." 12 Co 112 Bar at N 114. 1 Vent 22. This plea puts an end to the action & is a writ of course, unless the mistake can be rectified by amendment under the Stat. of Amendment. If it is amended it is a new writ and the writ can proceed as a new one.

2^d If a plea of abatement, Judge is made for the Plff a demurrer. "respondent oster" i.e. that the deft answer over. This being allowed the Def. is of course left at liberty to plead to the action. 3 Blk 303. 396-7. 2 Nils 367. Bar Pleas 114. 1 Vent 542.

3^d If an officer in fact is joined a plea ⁱⁿ abatement and found for the Plff the plea is ⁱⁿ law? is a formal plea. "quod ex officio" 1 Vent 544. Doc. Plea 15. 2 Nils 368. La Ray 594. Bar at N 114. In an indictment for capital offences. this rule does not apply. 2 Hawk 334 Bar at N 114. Bar 15 n. vide page 193-see ^{mark}

Pleadings.

but it may be questioned how can a plea be
replied to a plea which does not go to the merits?

I answer this rule is allowed to prevent such del-
-atory pleas. We have in this State adopted this
rule with a qualification. If the plea is an answer in fact
and goes to the merits, and verities found against
him final judgment is rendered as the Act. Yet if the
plea is joined to the Act the judgment is not final, but is
a "respondeat master." 1818 Edg & Parsons v. Parsons 2 Conn R. 377.
This point was decided in this case but the reporter
has omitted it in his reports.

If a Defendant pleads such matter of abatement
in Bar final judgment must necessarily go against
him the Defendant. 12 Mass 1020. 1 East 634. 1 Ch. Pl. 445.

It is a rule that a Defendant cannot demur
in abatement, but I find by authorities to be contrary to the
meaning of the rule is "that matter of abatement
is, no cause of demurrer." Miller 410. 479. Talk 220.
1 Ch. Pl. 457. 6 Mass 175-8.

And if a Defendant does demur in abatement judgment
goes in Chief as herein. "good demurrer" he has
now no right to plead again. For he has adopted
a plea of answer which goes to the merits, &
not to the writ, this rule.

So if a demurrer to the declaration concludes in abatement,
i.e. by concluding "that the declaration be quashed,"
judgment goes against the Defendant that is the concern
of the other rule. 1 Selby's entries, 8. Talk 29.

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The court is there as the demand goes to the ac.
I cannot plead again.

* Under the 3^d Rule I mean to have been there in
an indictment for a capital offence. This rule does
not apply 2 Hawk 334. 3 Bac. Ab. Pl. T. 14. 11 Ba 15. n. vide ^{see. m. d.} page

After judgment of "respondens amittit" a 2^d plea of abatement
cannot be received, for the defendant's plea, thus pleaded in
indignation of it were otherwise, the plea would have the
perpetual effect of delaying final judgment. See the
definition 5. 2 Lams 40. 41. Hob. 26. Bac. Ab. Pl. T. 14. 11 Ba 15. n. 457.

But when after judgment "that the writ abate," the
defendant has amended his writ. The defendant has still the
duty of pleading in abatement. As the amended writ is

It becomes a new writ, I find no Eng^l rule relating
to this point but vid. Hk 5. 6

It is a rule of Law, that after a gener. suspension
the defendant cannot plead in abatement, unless the cause
of abatement arises after the gener. suspension. The defendant
by pleading this contention waives all privilege
of pleading in abatement. But the rule is otherwise in
specific suspensions. See 3 Blk 316 Ba & the Pl.
C. 2. There is a rule, limiting a time in which

a plea of abatement may be given in. In Eng^l 4 days are
allowed. on rule is somewhat different. Consider et. 4. 18.
After this period ^{for the} the defendant cannot plead in abatement, unless
the cause of abatement arises afterwards.

Pleadings

our limitation: This. In Superior Ct the plea must be filed upon the opening of Ct on the second day in the afternoon. In our County Ct. the plea must be filed on the first, immediately of the filing.

See 1 Root, 564-

But this limitation cannot obtain as to our matter as our the good faith is not a matter of the action, See Plea. 297.

After he who is allowed the Pff may in most cases amend it in paying costs, by stating amendments & repairs, the amendment can be at Ct. See.

If the Pff finds his dec. insufficient, he may amend it and such is good in paying costs and after the Ct has given its opinion on the Pff the the Dec is ill, but before paying actuals and under the Pff may amend by paying costs. But, etc., Amend

Pleas in Bar

There are 1st The General & 2^d Spec. pleas in Bar according to G. C. C. C. is a single, certain, & material point arising out of the allegations of the parties & consisting equally of an affirmative on one side and negative on the other" C. L. 126. a. Com. D. 1st 11. R. But the Pleas, G. L.

Of Pleas in Bar

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I take this definition not to be wholly correct.

There is a definition of a good plea. There are four situations. The word "material" should be kept out.

According to the Law-Like rule. There must be in all cases except the single instance of a "verdict of right." In a direct application & Negative, It must be denied. Hence if one pleads a party is dead & the Opp. replies "he is alive, this is no plea." The Opp. should reply "that I.S. is not dead."

1 Vent 213, 8 T.R. 275. Co. Li 126. a Bar to D.P. 2 B.R. 1312.

There is another kind of direct denial which is merely technical, as where the party's death is pleaded. The Opp. may reply in either of two ways, "John this is not dead," or "I.S. is alive although he is dead." This aboque hoc is synonymous in law with "is not," though the latter does not so answer.

The origin of this rule has been somewhere placed in modern times. Thus when the Def. pleads that he was born in France and the Opp. replies that he was born in Eng. This was held a good replication. 1 Wils. 6. 117.

In then the rule is laid down thus. That if the second involves a negative proposition it is sufficient. But this rule would ruin the great rule to nullify.

In a writ of right, the pleas are always two alternatives, what one party says. "he has more right than the other." The other party says "he has more right than the other."

2 T.R. 117-8. 3 B.R. 315.

Pleadings

It is the safe way to close the issue in the old strict way without touching the rule in *Mis. & Ten.* & I think it would be unsafe to attempt to alter it, any relaxation of the rule imperils the landmarks of pleading.

Issues in fact are in gen. Gen. or Spec. or both but then is gen. Spec. a common.

It is said in the particular action of *Co. L.* there is no gen. spec. because a denial of the *Co. L.* does not deny the *breach*. & therefore spec. to be called a "common issue". This is a distinction going beyond any common law. *Bur. & H. St. G. 1.* *Lanes 113.* *Y. & N. 593.* *8 Y. B. 282.* I take it that all issues in fact are gen. & spec.

The Gen. spec. is a denial of the material allegations in the *dec.* or in other words it is a denial of all those facts which the *Plf.* is required to prove. *3 B. & L. 305.* *Bur. & H. St. G. 1.*

A Spec. issue is one joined as to some particular part of the *dec.* i.e. on some one or more of the *allegations* in it is called a denial of the whole. *Co. L. 126.* *Lanes 112-13.* *145.*

The Gen. spec. issue is predicated only of the denial of some part of the *dec.* for when an issue is taken upon any of the *allegations* it is called a gen. spec. issue. It is denial only, as a counter-distinction of spec.

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To all actions in law found on ^{a fact} manifest. The plea is Not guilty - To debt on Simple Contract. "Nil debet." On Specialty. "Non est factum." Nil debet is not good in a Specialty, for it concedes the debt & does not avoid it. To Debt on Tresp. "Nil tunc reced." To account "Nec per me a Receiv." To Assumpsit. "Non Assumpsit." To Warrant for debt in Tresp. "Not Guilty." This plea for non to me not proper. ^{on "all entry alone"} 446 of East 2d. To Replevin. "Non cepit." To Ejectment. "Not Guilty." (Non culpabilis. To Warrant in Cont. To Warrant in Cont. "No warrant, & on esse action." "No de p. in g. d. g." 2 Blk 305. 301. 4th 54. 1st 17462. 257. 3d 32. 1st 8167. It was formerly held that Not guilty was a good plea for to an action for a promise. But it is now agreed that Not guilty is not good. But aided by verdict, for the action is called "Supper" in the law, yet it is only a contract. 1 Les 142. 1st 1122.

Exp Dis 167.

To debt on Simple Cont. "nil debet." is the usual plea. but the Def. may plead to debt for recd. also "Nothing in arrears." But to an ac for Cont. Broken when broken. This is not a good plea. Because the plea concedes the Cont. by not denying it. & it concedes the damages by not denying them. & if even it were a bad plea Cont. 588.

If to debt a Bond the def. pleads "nil debet." and the Plff does not demand this instrument conveyance, the Def. is set into any defence which he might have made in Simple Contract, yet if he had pleaded "non est factum" he could do no more. 1st 324 3d 38. 2d 17462

183 & d 82. 1 Ch. R. 498.

Shadings

The case of the distribution between Mr. de la and another person, who I suppose was blind to the at first. But I suppose the case to be this, that the Plaintiff is in the first place has demanded upon the fact of an actual existing debt, independent of the conclusive evidence afforded by the deed & waives the deed by matter of estoppel.

The general issue is a plea to the action. If there is an action of assumpsit the writ charges the debt as being given and the count charges the debt & claim by the Law of A.B. The general issue here goes to the count and not to the writ so that if the Plaintiff wins

Co. Lit. 126. B. 1. 8. 1.

The general issue takes all issue in fact in general encounters to the County and is to be tried by the jury.

But this is not universal, for there are other modes by Co. Lit. of trying, as by record, by writ of Law &c. 3 B. 313-15-30.

The general issue of "I will not" concludes with a verification and not to the County.

There are but two modes of concluding, one to the County the other with a verification, but "I will not" cannot conclude to the County.

The issue is tried found, by affirming and the existence of a debt and being inspected by the Court. 2 N. 443 2 N. 113-14. Lawes 146-8. 226. 1 B. & P. 411. 5 B. 473.

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But if the record of a foreign Municipal Court is den-
ied the conclusion must be to the County. The record
of a foreign Municipal Court is not in our Courts a record
it is a matter of fact, provable like other facts, by
testimony. It may be proved by copies admitted by
jury & not by Court. 5 Burt 473.

The mode of pleading must be the same I conceive
when a Court a destroyed record is pleaded & alleged
for it is not to be found & must be proved by extrinsic
evidence, & when this extrinsic evidence is sufficient it must
be tried by jury. 5 Burt 473.

In this State of Texas, the parties may agree to con-
cede to the Ct. that which is triable by jury. But this
is at the option of the parties.

50th page Revised Stat. of County of [unclear]

If the denial comes in the Dep. he pleads this "I & of the
Inhabitants being of the County."

If the Pff tenders the issue it is as follows. "And prove to
the allegation of the Dep. may be engaged of by the County."
10 Mod 166. 3 Bth 313.

This being done by the Dep. i.e. after the Dep. has tendered the
issue. The Pff adds a "Similitur" i.e. "And the Pff doth so like
wise."

Co 126 a Laws 147-8.

And the omission of a similitur. has always been held
in Eng^d to be fatal. But the "similitur" may now be added
when there is an implication that such
was the party's intention. 64 L. 3 Bm 1793. 1st 2nd 3rd 4th
2 Lard 319. a 25.

Pleadings

It has been said in this State that a Similitude is added
by recital.

Ind. 2 Day 392

The Similitude is ~~very~~ no matter of pleading. This is
nothing more than a written affirmation that the
party adds the Similitude joins in the prayer of putting
himself upon the Court. Why this should just be
accepted By the form of the Pleading the recital does
not show that the party who should have joined did join.
But here the Pleading does show the fact. In Ind. 183
an trial of this own case I now upon the slightest
ground will permit the Similitude to be added ^{even} after recital.

An issue always closes the proceedings, and when
a proper issue is well tendered on one side, the
other must join in the issue, excepting one or two
particular cases.

On the other hand if an issue is ill tendered the
opposing party may demur to it. See the 21. 81
3 Bk 314, Comb. 86. 1 Tams. 338. Co. Litt. 126. a.

The Party tendering an issue when he (does)
does it in this form, inserts the words "in manner
& form," as in Trespas. The D. P. pleads he is not guilty
"in manner & form." Now there words are sometimes
matter of Substance & sometimes matter of form,
The rule of discrimination is this. What the
words denote put in issue the circumstances all
altered the principal matter in issue, unless those
circumstances are material and

When the circumstances are material and necessary
to be proved as alleged the word "in manner & form,"
traverses those circumstances. See 317. Land 318. n. G.
In Thross. These words put in issue material matter
stated on the opposite side. If they are not material
there would do us deny them. A complaint of a Battery
by B. & states the act to have been done by a "sword." Now
whether the act was done by a sword, a club is immaterial
and P. pleads if he pleads not guilty in manner & form, this
does not put in issue the circumstances of the act being done
by a sword. because that fact is immaterial. So in declaring
an assumption, a promise is stated to have been made on the
1st of July, 1824. Now if the Deft pleads non assumption, in manner
& form, this does not put in issue the time of the promise made, it is immaterial.
And in non-claim these words do not put in issue
time & place. for generally time and place is not material,

by deed.

Now on the other hand. If the Plff. pleads a "feoffment," & the
Plff. pleads a denial of the feoffment "in manner & form,"
then the feoffment is material, and the Deft. cannot
prove feoffment ^{deed} unless he will do it at law
with alleging it.

A Pleader should remember that these are those words Code
281. But the Pl. 91.

When in a traversing action. the Plff. pleads a plea of
way of revenue, & the Deft. pleads the general issue. with the
word in "manner & form," these words do not deny
the plea.

But when a plea is made by way of local description
as a Battery in the House of J. S. here the word "manner &
form," denies the plea & makes it material.
Here if the Deft. omits the word "in manner & form," the
Plff. must have a demurrer 2 East 497. n. 226
• McMez 501. 507. Keeling 15

Pleadings

There are immaterial issues.
An immaterial issue is one arising over a material
point - a allegation on the other side being some
allegation not material. By an allegation not
material is meant one not decided by the
verdict of the cause, suppose the party alleges
matter of inducement, as in *Truvel*, this is an
immaterial issue. So if he denies matter of
aggravation, if he denies some ~~particular~~ a
particular his plea is a bad one, so if the opposite
party denies what the plaintiff pleads has not
alleged, his plea is immaterial & bad. Bac. Ab. P. 11.
3 Blk 345. 1 Wils 338. 2 Saunders. 319. a. n. d. Call. 371. 1 Ld.
32. 2 New 137.

And an immaterial ^{issue} is regularly not decided by
Verdict, Hence if three parties to whom an immaterial
issue is taken voted of denying as he ought, ~~just~~ ^{just}
issue, the Court will order a ~~repleader~~.

When an immaterial
issue is found against the party pleading it, right is
not always altered and the other party may gen.
have just the same immaterial. This distinction
I will explain under the head of "Arrest of Judgment."
Suppose in an ass. or Ex. he pleads that he himself (instead
of the tortfeasor) made no such promise. Here the
Court would order a repleader if issue was joined upon

2 Vent 186. 3 Blk 335.

When Mr. Pleading in an issue is not as to entitle
us in material matter. (d) an issue taken in such
matter is not immaterial: for there is nothing pre-
tensive to answer. The force here is in the party who
allegation he has denied. in this case there need be
no traverse & may be a demurrer.

An issue cannot be joined in

It is a rule that a negative pregnant is affirmative
pregnant. A negative pregnant is that implies
something in favour of the opposite party. An Affirmative
pregnant is the converse of the Neg. Preg.

An issue joined in a negative an affirmative plea at Law,
is bad on judgment. This is however now cured by verdict.

See Fine 87. 312. Co. Lit. 126. 313. 186. 203. 2 Land 319. a. n. 6.

But this a negative pregnant is not bad when the
affirmative is not sufficient to maintain the demand
on the opposite side. Lawes 114. From Mr. Lawes rule
I see he reverses this ever preceding, his opinion.

By Stat 32 Hen. 8. A Neg Pregnant is a bad by verdict.
At this day it seems that a Neg pregnant is ill only in
this, demurrer. in the other cases of Joinders.

1 Bac 94-5. Bon Ab. Pl. 5. 2 Land 319. a. n. 6.

You will see that a Neg pregnant includes what is material
and what is not material. An immaterial issue & a
negative pregnant are frequently compound, and are almost
indistinguishable. By these the following rule the perplexity is
dispelled. 1st A Negative Pregnant includes what is material
and what is not material

2^d An immaterial, includes only what is not material,

Readings

the Informal plea is one taken on a material allegation but not taken in point of fact. But many non-material allegations contain a defect in fact, but in this case it is not called an informal plea.

This latter quality always characterizes the plea.

This plea is of course aided by verities. For the object is to show the law of the case & not to show the facts. 3 Bk 395. See also M. S. 1. 1 Lev 32. C. 37. 2 Lev 318 a. n. 6.

There are the same species of pleas in fact.

The gen. plea answers the whole complaint, covers the whole dec. under this plea the Def^t may contest all the M^t allegations. But in gen. matters of fact are also in question. C. 224. 1 Ch M. 478.

But this last proposition is not invariably true. The gen. plea puts matters of fact only in question. This must be true. Where the gen. plea does not of its own nature & necessity involve any other matter of fact. Still there are cases in which the gen. plea is the proper plea. The Def^t does not enter to any one fact in the dec. He intends to rely on collateral matters. Thus

When a contract is void through the absolute incapacity of the party sued. The gen. plea is a good plea. This it denies no one fact in the dec. or in some contract. 1 Bos C. 97. 1 Lalk 7. 2 Bk R 1082. 6 Lalk 311. 1 Ch M. 478-9. This instance of a general plea is the only instance that strikes my imagination, where the gen. plea is a proper plea when no one fact is denied, but sustained by collateral evidence.

Of Pleas in Bar.

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There are not many examples falling under this last rule. That of the former Court, is the most conspicuous. The great term of allows a former Court, so to plead is barren there is no moral agent.

But if the deed is void or a void thing, and the incapacity is the obstacle he cannot repley plead non est factum, but should plead his incapacity, as a case of "ignorance" which excuses he gives in evidence under that plea of non est factum, as in case of "Lacey". ^{"his incapacity must be specially pleaded"} This is as a idea is no moral agent, yet his incapacity is excused absolute as a former Court Ex. Dig. 223. But

the PI 31, 5 C. 119 Feb 675 3 Bar 1805, Ex. 72, Ch. 478-9.

Again when a deed is void in law in its own nature, but is flow an incapacity of the obstacle the plea is not a good plea. But that excludes which characterizes it as void must be specially pleaded. If an unmarried Bar is pleaded the Bar cannot plead non est factum, and give in evidence the "unmarried". If a Bar is pleaded and an error upon that bar, the Bar cannot plead non est factum, and give in evidence the Bar, for the evidence is inconsistent with the plea.

Pleadings

The an illg al Cont (is) as to its fitness is a legal nullity yet as the obligor is under no absolute incumbrance to the act in point of fact, ^{the Cont is} yet, bad in point of Law ~~the~~ obligor cannot give it in evidence under the gen. issue.

By the Com Law rule of pleadg; If a Specialty is made void by Stat. the Special matter which makes it void must be specially pleaded. This does not hold as to Genl Cont.

Let Coke again a particular reason for this.

He says the reason why a Specialty made void should be spec pleaded is, that the intention is of ~~the~~ so solemn a nature & requires a Spec Plea, because the solemnity requires spec pleading. I do not see

The true rule is that the defence of illg alty is inconsistent with the gen issue non est factum. 5 Co 119. 4 W 72. 2 Blk R 1118. Gill & 163. Esp Dis 223-4.

Any erasure of the deed after it is sealed, a blot of the seal, an alteration in the terms, all these may be given under the gen issue, for as to the alteration it is not the deed of the party 5 Co 119. A & b. 11 & 27 a. Esp Dig 223-4.

also in a case where the deed was destroyed by a Householder, that no action would lie on the deed. But here the obligor does not lose all remedy, he may fill a Bill in Equity to have the obligor do what is stipulated in the deed and the writing is good evidence.

As to the distinction between depositions and
depositions may be given in order under the 80th. I mean
that the Com Law principle is, that if the deponent is con-
sistent with the 80th it may, if not consistent it
cannot but must be specially pleaded. The latter
is an altered deed, that may be in a variety of examples
admitted, but the rule needs no particular illustration.

notwithstanding this, I assume, any thing which
 shows that the D^{ft} had no right to remove at the
 time of the D^{ft} Pleader, may be given in evidence
 under the general issue. I do not treat this as an ex-
 ception to the general rule of C. Law, for in that respect the
 Pleader is allowed as a non facted, the plea as a
 fact. It is not a new plea, a legal consequence
 of the introduction of a legal duty, stated as the con-
 sideration of the promise, I have written ^{reference} to this
 (the) a dispositive, the debt a duty, allowed as the con-
 sideration of the duty, dispositive the promise, Mr.
 Assump. does not mean, requires, I to the
 D^{ft} did not make a promise, but it means that
 at the time of Pleader the D^{ft} had, no right to
 remove. It is true the plea is an Assump. to make
 the D^{ft} to show that he did not make a promise,
 then the D^{ft} can I assume any good in the ^{Assump.}
 - You may other allegations
 In sum, the D^{ft} (promise) is a Foreign right
 on record of Arbitrators, Release, a specific good for
 the Game debt, 2 Ben 1010. 1 Ben 498, 3 Ben 1353, 2 Ben
 787, 2 Ben 108, 2 Ben 143, 1 Ben 170-2.

Pleadings

There is an other defence I think may be given in
 evidence "Non Aff." accord I satisfactorily, on this there
 is a diversity of opinion 1 Ch. 11 472, La Ray 566 12 do
 376. 5 Burr 238. ²³⁰ 4 Exp. 181. Com. Dig. accord.

Does this rule prevail in these circumstances, when
 the law has an actual person made, Now I can
 see clearly there is this can be impossible, ^{there appears} cannot
 be given in evidence under the general issue. But for want
 of attention and consequence this rule has been extended
 to all kind of assumpsit with gen. & spec assumpsit.
 This rule obtains in this state. But it must be men-
 tioned on principle Exp. Dig. La Ray 556. 5 Burr 18.
 1 Ch. 11 197-8 Burr 11- M. L. 3. 1 Ch. 11 472-3 Bull N. 572
 1 Ler 142, Salk 140, Particulars 1 Mod 210. when
 the true distinct is collected, laid down, the authorities
 are abundantly against it.

But as it is the Law, That of Law, Tender, &c. &c.
 I Bankrupts must in all cases be strictly pleaded
 and cannot be given in evidence under "Non Assumpsit" Ch. 11.
 178. Exp. Dig 147, Exp. Dig 157 La Ray 153, 1 Burr 283 n. 2.
 The reason given for their last defences cannot
 cannot be given in evidence under "Non Assumpsit": They are matters
 of Law not going to the gist of the action but
 to the discharge of it. This reason is altogether ineffectual
 indeed, But, there is a reason, which is, That these de-
 fences merely only destroy the action on a remedy, and
 do not take them off the face of the debt, they are
 in discharge of it, These are in discharge of the debt.
 But it is the debt.

Of Pleas in Bar.

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To in Law of the Def. admit the debt in three distinct
actions. But now he has also a distinct debt which he
pays over him to Bankrupt Cy. as in detestment is adu.
and that runs upon the bankruptcy & composition.

But in debt on Joint Contract, our Books admit the
State of Limitation to be given in evidence under the plea
of "nil debet." See Coke upon the second of this is the
nil debet, is in the present term. It held he does not
owe. but this seems to concern evidence. I do not
see why the State of Limitation may not be given in evidence
with the same propriety under "non assumpsit" and under "nil
debet." Non assumpsit as to is concerning a plea in the present term.
It seems may also be given in evidence under "nil debet."
and so may evidence of all those defenses before mentioned under
Lanc. 283. n. 2. 2 Lev. 215. Corp 588. Doug 108. 2 W. Bl. 143.

Under the plea of non assumpsit, advocates
may take advantage of the State of "blended & perjured."
The proper way is to plead the plea of "nil debet" and when ever
the off. offers proper evidence against to its admission.
the Party may as if he pleads specially the State of "blended & perjured."
maintain the plea for it is good. 2 Lev 214. 1 Br. Ch. 92. 1 Ch. R. 470

471 But this mode of admitting shews an
act of defense, and the plea of "nil debet" is not allowed in
C. Law in actions founded in Tort any more than
in actions founded in Trespass, is a "plea in abatement."

This rule comprehends all matters of justification
which must be specially pleaded Ben. M. H. 3. 3.
Nov 1762 5 Court 478. But M. P. 47. Ed. Dig. 317 Title 252.
All matters of justification must be specially pleaded.
for matter of justification is matter of Law, and matters
of Law must be specially pleaded.

Pleadings

But it is an unwise rule that every defence to the action which cannot be made by plea may be given in evidence under the gen. issue. *Lewis 111*

There is an eminent rule laid down in *Lee, 9 Juris Dict.* he says the Stat of *Lee* cannot be given in evidence under the plea of non assumpsit. 2 Juris, 215. This is not law.

The fact whether the defence is committed to the Court is not the criterion. In almost every State the Stat allows almost every plea to the action to be given in evidence under the gen issue, by (the) giving evidence to the proper facts of such defence.

But instead of pleading the gen issue, the Deft. may allege any single traversable allegation which is to the action & conformable to the Count. This is a *special issue*. A great number of facts are frequently necessary to establish the Plff's claim. The deft. may plead the gen issue if it is true and relate in evidence the particular facts. But there is a way which is, The special traversing some particular fact in the Plff's allegation, without pleading to the whole. It traverses such fact as forms a ground for the Plff's recovery. *Comm Dig N. E. 1. But the Pl. J. B. Doctina*

Mass 203. Lewis 112-35, Co Liss 282.

But a *special plea* amounting to the gen issue is inadmissible by a *third plea* I mean of course a plea alleging new matter, and every plea to the action which does not deny the declaration, becomes a *third plea* if it is a *special plea*. Any third fact or thing which ^{could} be called to justify new matter, a *special plea* then amounts to the gen issue when the third fact alleged is in denial of any allegation in the case.

If in an action of Trespas, the Deft pleads ^{merely} that he
was in some distant country at the time of the act complained of, and
this is a bad plea for it amounts to the Plea of Non Est. See 11. G. 3. Esp. Dig. 318, 413.
3 Blk 309 10 Coke 95.

Notting in law ought to be pleaded by the Deft. except new matter the legal sufficiency
of which must be shown - excepting of law to the Court.

In this State by Stat. Tittle in the Deft. is pleaded all in
"Sole" "guarantee" "plea" "is".

It returns then to the rule. That a defence amounting to
a denial of the Plff's allegation cannot be merely pleaded.
There are three exceptions.

But to this rule there are the following exceptions.

1st A Plea which amounts to the general issue is good if it
contains more matter of justification. ^{idea dead} So that if matter
of denial & justification are mixed together, this may
be well pleaded. For matter of justification is always matter
of law & matter of Law must always be pleaded
to the Court. For a couple of exemplifications of this rule

3 Lev 40. When it is fully illustrated. See 11. G. 3
Esp. Dig. 318

2^d The Ct. in its discretion allows now a
special plea amounting to the General Issue. If the facts
of pleading are such as make it a difficult question
of Law. That is, when it involves uncertainty among the
Lawyers. But when it is clear & a denial of the fact
then can be no sensible. See 8 G. 3. 2 Lev 166. 274.
See 11. G. 3.

Readings

3.3 In *Trippes v. Africa*, a *three plea* of *Tell* is
admirable *because* it gives color to the *off* tell
as respects color of tell. I shall treat of it hereafter -
10 Co 90-1. 88. 3 Bllk 309.

Lawes 126-7. 51. & 150

But there appears to be some doubt as regards the
^{that may be taken}
advantage of the *deft* error in pleading in the above instances,
whether the advantage should
be taken by *demurrer*. This is supported by ^{some} authorities
The *demurrer* must be taken before the *defect* is
pointed out - *see* *10 Co 95. a* *Bur*
att. Pl. q. 3. 1 Ch R. 498. Cro Car 112-157.

But will you ever find in the *second* *case* that to
take away its *discretion* allow such a *plea*, and
how can we reconcile these two principles?

Answer, to *other* *positions* such a *plea* cannot be
taken advantage of by *demurrer* But must be done
by moving the *Ct* - "that the *defect* enters the *ver* *ipse*
with *prize* by *me* *adice*". This appears to be the
correct rule. ^{Here} The *Suprem Ct* of *Green* have adopted the
latter rule. *Pr. 1* *authorities* *How* 127 *1* *Len* 178. *Cro* *Len* 165.
2 *Moss* 274. *5* *ib* 18. *Co* *Li* 303. *1* *Ch* *Pl.* 498. *2* *day* 431.
I conceive however that the rule allows *demurrer*
may be its application under certain circumstances.
Thus if the *Ct* refuse the *plea* but the *def* refuse to
accept it & the *def* *plea* is in the *demurrer* of the *off*, then
I conceive *judgment* may be given against the *def* - the
demurrer. *From* 10 *Coke* 94. *Bur* *att. Pl. q. 3.*

Of Pleas in Bar.

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The Plea can never be under the merits of Torts or de-
-murr or answer to the demand at all, for if the Ct. give
this plea as the plea, judgment will be entered on the merits
if the Deft refuses to plead or enters the Deft Plea 202 Bar. 11. H. 2. B. C. C.
Inc 165-319.

A special plea always imports what would be a demurrer
supposed the plea is not of course a special plea
amounting to the plea itself. This latter plea is good
if good then it is a demurrer the Deft pleads a special
plea and is showing that would not be a plea amounting
to the plea itself but would support the plea itself.
Bar. 11. H. 2. B. C. C. 356. Id. Reg 88. 9. Lick 394. 5. Lick 18
they do not amount to the plea itself because they
deny no part of the dec. Lick 112. Id. 5th. 9.
The following is a rule of distinction.

In the first place when a plea admits that ^{there} was an act
of action in that the allegations with the dec are true
and amount to the plea itself the plea pleads in
order to deny the plea itself, a demurrer
does not amount to the plea itself because it admits
a claim of action, it does not deny the dec
nor on the other hand, the plea denies that
there was an act of action if it does
not deny the allegations with the dec, it does
not amount to the plea itself. When a plea pleads
that the dec is an act of action, this does
not amount to the plea itself because it admits the
truth of the facts, the claim of action of the giving of
the bond is admitted. Lick 112. 88. 9. 366. 1. Bar. 11. H. 2. B. C. C.
Bar. 11. H. 2. B. C. C. 356. Id. Reg 88. 9. Lick 394. 5. Lick 18

Pleadings

vide the int. of Tot. The diff. may be all active in
(that) ^{a few places under the surface} and a few places, that amounts to the expenses
of erecting a column a road & some sort of the diff.
1821

42. amounting to a sell. & yet it is contrary to the
the Lord's will, & the will of the Father. I am
nearly what does and with you is very
in ~~affairs~~ & ~~the~~ ~~spirit~~ by giving color to the ~~affairs~~
that gives color to a man's action and is a
conviction of the will that we can not find
what may amount to the you, if you,
Yr. & p. my requests, please

By giving color is meant, the Septs all being in the
 giving of a deep brown deposit little better than the very best
 color. as common to the other stations of the Septs are little
 but he cannot be compared and was given to great a little better.
 June, 180. June 17, 180, B. B. 309. June 18, 180, 10 to 10-1. Aug 18, 180.

But the the apt manner in which you
 have put it, is really your very friend. I am
 sure you are a scholar, for this does not only
 show the accuracy of your own knowledge, but
 the accuracy of the record in the days of your
 youth. See G. J. N. 34-40. Phil. 218. 2 L. M. 531-3.

This, then, I believe, decided all doubts upon the destination of the common bar. The committee placed a printed notice accordingly, the title "The destination of common bar is now explained."

wie Nils 218. 1. und 270^u 1/2 v. u. 6

At New stating the facts about go to have
the gen. & concerning with the co. if it is good,
then to call on Bud. the D. J. ^{state} that it is lying
on behalf to J. D. as an excuse to be delivered
over to the Off. on a condition, which condition
was never performed. It is "non est factum." In 12
D. J. may plead that the said state. attend to
"non est factum." This is a matter called "admission
non est factum." In the D. J. B. L. 274, 1 Vent.
9. 216. Lill 164. to 166.

This plea amounts to some opinion, except to declare
to the County that is the correct opinion. I think the
other are of the opinion that it may conclude with
a confession. The all hands agree in a confession
- since the County is good. In support of concluding
to the County, vide. 8 Feb 26. 1 Vent. 9. 210. B. L. 274.
Lill 274. Exp Dig 222. In support of the other opinion
vide Lill 164-5. Dig 112. Lill 30.

I am decided that this plea must conclude with
County. For if it concludes with a confession, it
seems mistaken to say plea, but converts it, placing
into a plea plea amounting to the gen. if. It is
not a gen. if - going with. It is a confession so
to speak that this plea must conclude with a
confession.

It is said the D. J. may plead one and then the fact
of the allegation. Lill 274. 5. and if it is not
to be concluded to the County. But this plea is
entirely unperformed.

Pleadings.

When a Plea of this kind may be deemed to be
the conclusion of the Court, can be no objection
It is proper to allow a demand when the Plea
matter preceding may not respect the evidence.
The Spec. facts must be proved as the Plea states, or the
Def. fails. He is ^{not} allowed to prove any other unless he proves
the Spec. facts. Now in the case when the Deft pleads specially
the allegation of a Bond and concludes with "non est factum"
here he is bound to prove the allegation as stated specially or he
fails.

Till 20 164.5

The Ld Coke says was always the mode of pleading an-
swering when the a. d. said upon ver. and by way
of return, but when it became so by way of answer
to special facts, 119. m' C. 1100. 218. Ld Coke says "Spec-
ially non est factum" is improper because it throws the onus
upon the deft. This is a strong reason.
This may protect it, never in answer to a B. deft. &
then it can be no answer no impugning it, frequently
then to narrow the inquiry, excluded.

Def't of Pleas to the Action

are called Spec. Pleas in Bar.

where the Plea is to be denied a denial of a Bar to
be "an admission" the fact stated in the dec. and goes
in avoidance thereof. Bar the "admission" 2 Ld Coke 37.8.
129. 115. As a denial this is fairly correct
But you turn the onus commonly from a Spec. Plea
to bar away from the back of the dec. and goes in avoid-
ance of it.

Of Special Pleas in Bar.

217

But I say this definition is universally true.
In a Spec. plea in Bar frequently traverses some
particular fact in the dec. vide Hyl 104 En Dig
45. Co E. 30. 418. Suppose in Hyl you enter in
the 1st p^{ar} the 2^d p^{ar} pleads a defence in the particular
day and time, and in all other days, then this spec.
plea in Bar traverses a particular fact in the declaration.
What then is a Spec. plea in Bar

I would answer it to be "one that always alleges
the matter in Bar to the action and always con-
cludes with a verification". This definition I think
to be true. The plea is sometimes correct and sometimes not.
Every plea in Bar regularly admits all traverses
alleged which it does not traverse. become out-
puts, and is called a party's allegation which he does not deny
and goes in answer of them traverses allegations
which he does deny. Hyl 91. 116. 38.

There is (I think) only one plea in Bar of this kind of plea
which the good master admits the 1st p^{ar} allegation
and denies the 2^d. I mean a plea in Estoppel.
The effect of this plea is to preclude the 2^d p^{ar} from
denying the 1st p^{ar} which he has allowed. i.e. I find
of law the 2^d p^{ar} is precluded from making
the allegations which he has made. 3 Bk 308.
Miles B. 3 Eas. 346. 365. This matter of estoppel consists
of some former matter of record which is pleaded
out to preclude. This is an only plea in Bar
from which

to save the. There is a plea in Bar, the way plea
of participation must cover the point intended to
be justified.

Pleadings

The plea of a Plea in Bar to the Bill is not a defence
 to the Bill, as it is not a confession and avoidance
 The plea, pleads new matter in defence which amounts
 to a justification it is bad & he fails.

1 Lord 14. n. 3. 28. n. 1.

Corp Dig' 318. 3. 4. B. 298. L. 394. A plea in Bar to a bill
 and since in consequence the def. pleads the Supremacy
 under proof of C. the said containing more than a question
 to the efficacy of the Statute. The Bill is not a bill for it is not
 a bill to justify the Supremacy.

A plea in Bar always answers New Matter. which
 may consist of what is negative as well as what is
 positive. It is used in the affirmative, but not always
 It is used as a confession and avoidance, the def. pleads negative
 matter. It pleads that the Court is not broken. This is New Matter
 to what is New Matter. I am. Any other and every thing
 which is a denial of the allegations in the bill
 will be New Matter. By New Matter is meant
 that it is contradictory to the matter of the bill.

A plea in Bar must always be
 matter it must conclude with a confession and avoidance, an
 answer is by the Statute of Bar. The plea is a bill
 a confession and avoidance is necessary. it is to give the officer
 a chance to take an issue. which afterwards the party
 must have in 3 days. 1st by denial. 2^d by confession
 and avoidance. 3^d by demand. which must be a confession
 in order to leave the plea open.

1 Lord 103. n. 2. 2. A. K. 303.

3. B. K. 309-10. Corp 5. 5.

Of Special pleas in Bar.

29

I observed that every thing pleaded as new matter, &c.
in this observation I mean, not to exclude a demurrer (or in
some cases) In those proportions I did not mean to comprehend
a demurrer.

And it seems that new negative pleas need not
conclude with a verdict. The custom however is
to conclude with a verdict. Bull. 5. Term 145.

But on the other hand pleas which follow at law
a complete & proper issue shall by law, and always
conclude to the contrary. If the def. to trespass &c.
and plead not guilty, without concluding to the contrary.
there is no issue, there would be no final end as
2d Coke on. Mas 98. Calk 1558. 3 Bk 308.

In this case the word "complete" is superfluous, for
there is a record of the issue, & the issue is an
issue complete to the issue, as if pleaded "verge" but
this does not conclude to the contrary, this is a
mistake.

When the defect alleges distinct matters, & def.
to answer parts of the acc. he may conclude each
matter of defence with different verdicts, or he may
swear the whole with one verdict, 1 Sand 338 n.
6. 338 n. Calk. 43. 1 Salk. 298. 312.

All ^{spec} pleas except colour admit that they do not deny.

It is a consequence of this rule that "the debt" is not
a good plea to "deny a bond," the reason is that as
it is not not deny, it denies the content of the
bond & yet it alleges no specific matter in answer
it can be admitted a complete issue is made.

This plant is in Gen deumure, 3 Les 170. 2
Mile 10. La Rey 1500. Jan 778. 780. 5 Bon 2586.

My account of the places thus far have been general

The Requisites of a good Spec. Thea.

ad Coke lays down a rule amounting to nothing more
than that every person must plead a good, plea, viz
C. L. 285. 303.

194 Every plea must contain specific
matter otherwise it is not well made nor
specify a basis of relief, of course not true.
2 Feb 74. Laver 137-8.

The subject matter of all pleadings is fact, and every
 plea should so far as the subject admits of it. State
 the matter of fact plain matter of Law, and therefore
 every ^{the} plea is where the fact of Law is so blended that
 they cannot be separated, it is ill. So to determine
 the diff. plead that "he lawfully enjoyed all the goods of a
 slave" is not a plea. This was bad. he ought to have
 recited the title in which the fact might be
 specially traversed. he should ^{state} the fact of his entry. This
 is a good compound of fact & matter. ^{of Law} totall I compound
 the diff. 9 Co 25 a. 2 mod 55. a Lawer 138. Bac str. D. & L.

A transfer of all the allegations would embrace
all matters both of fact and law, which could go to constitute
such a case. A Plea in Bar to the whole does must answer the
whole & answer, on coming of record, determine it is all in the other
there is no as for Appear & Pleading & winding up the debt principal the
2d rule & Pleading, & not the winding up the plea is all for the whole

I am now to be read as well as the chapter & Butler
as for the wording for an entire plea cannot be done
in its effects. Lawes 135-176. 1 Lord 28. 208 n. 1. 2 d 50. 127. 2 d 50.
4 Bac 80. Rep Dig 318.

In pleas of a release be pleaded, all trespasses after
the date of the release must be traversed for the plff can
prove trespass after the release with propriety & thereby turn
him into vicar, Hob 164, 196. 636

^{1/1040}
^{1/1040}
^{2/337}
^{in 127}
This requires of a plea, answering the whole dec. as to
to all sub. pleadings, the Replicite must answer to whole
plea in Bar, i.e. all material matters in it. The Deft however
may make different answers to different parts of the dec. whether it contains more
counts or only one. Thus if it be a trespass for taking
and carrying away 10 horses then B may plead (that he) paid
as to 5 only. ^{to a portion as to the release} But (a. l. 100) in an action as a bailer for good
to keep & to carry & he plead that he was discharged for
keeping them but not that he was discharged from
"carrying" them. Then his plea is bad as answering only a part.
This example is applicable ^{to the rule on the} to the rule on the Hob 28. Bac. 12.

Every plea to the action is taken as a plea to the whole
of the count of action unless it is expressly limited
to a part of it. ^(a) Lawes 101 to 103.

On the other hand if matter which would be an
answer to the whole dec is pleaded to a part
only or a defence the plea is bad. Thus, to 100
the Deft plead as to 50 a release of all demands. Now
if he had pleaded this to the whole amount it would
have been a bar. Talk 179. 4 Co. 62. An. Jac 27. 1 Lord 28.
Cus E. 268. 330. 434.

(a) If the plea purports to be an answer to the whole & answers only
a part it is good even if decum. for the whole is answered but
the answer is insufficient.

Readings

There is a most material distinction arising from the construction of this rule.

If the Plea purports to be an answer to the whole dec. when in Law it is good as to part of it only. The mistake is a good cause of abatement. This is an answer inoffensive in Law. 1 Saund 28. n. 3. Selk 179. La Ray 331. Hen 303. Lawes 135-6. Thus to a dec. for assault Battery & Murther & the Dep. pleads to the whole dec. an arrest with a writ of Habeas Corpus. now this is a good answer to the Ass't & Battery. But to the murther it is an answer & if so it is bad as to the whole dec. and this plea being bad in part, entitles the Plff to recover on the whole.

If the dep. pleads an answer to a part of the dec. just, which would be an answer (good) either for a part or for the whole and makes no fault the answer. The Plff should not demur. But should take judgment as for "nil dicit." &c. for want of a plea. 1 Saund 28. n. 4 Co 62. Selk 179. La Ray 231. 841. Hen 302. Lawes 135-6.

I have laid down this as applicable to all cases. In some of the Books you will find it differently laid down. It is expressed that if the dep. pleads as to a part, just in Law which would be good only for a part, then there is good cause of abatement. But this plea to a part only is a discontumacious. He means that the whole is nothing. If therefore the Dep. pleads to the 2 parts of the dec. and permits the remainder to go ^{unanswered} means that this plea is then ^{and he is} good as to the whole yet if a part is bad.

4 Co 62. Hen 303 1 Saund 28. n. 3.

Suppose then to know for 10 Years the Deft pleads
as to 10 Years, a release, payment, &c. then you will
perceive the Pff answers are, a plea, & therefore it
is a discontinuance & the Pff must not demur.

Further the Pff ought not to accept of such
a plea and if he demurs to such plea he ab-
-sconds his right to prosecute. he waives his action
as to an entire right. his demurrer is a discontinuance.

The next must in turn answer the whole
claim. Therefore the Pff cannot demur to what
there is a plea in B & P. 427, where a demurrer
is holden to be good in this case. Then the plea began
expressly as answer to the whole but concluded
as an answer to a part only. The Court held he
must demur by reason of the incompleteness of the plea
in the above case. The plea began with an answer to a part
and concluded with answer to the whole. The lawyers I feel the
-ted it, in either way you will see the mistake illustrated.

But the rules laid down regarding the plea
to be ^{an} answer to the whole dec. do not require the
Def^t to answer any ^{to} particular part. For a
Plea which answers the gist of the ac. covers
the whole grievance and is an answer to the
whole dec. 1 Lord 28 m. & therefore a plea, ^{of the ac.} then the
Def. broke an ^{the Pff's answer} entered, & expelled the Pff - here an answer
wherein the Def. justified the breaking and entering, & so
became it covers the whole grievance.

Such a plea is good if the pleas go not further, for
then the breaking & entering of the house is the gist. It
expresses it is never matter of quantity.

Pleadings

Suppose now the Plff declares that the deft took
 force his the Plff Home and beat him the Plff and
 expelled him from the Home. & the Deft. justifies bearing
 and entering. Then the plea answers the gist of the action
 Now how much the Plff seems for an injury to his person
 by expulsion. I answer he must in such case make
 a novel assizet. alleging the expulsion as a distinct cause of action.
 3 Pl 292. 1 id 479. 836, 1 He
 Pl 555. 2 Wils 20. 3 Pl 311.

What is a Novel Assizement.

In W Pl 311 has defined a novel assize. but his
 definition is insufficient -
 The assize is ^{with} consisting ^{in this} of alleging all necessary cir-
 cumstances in the replication what is alleged in the an-
 swer. And it does consist ^{in this} or in stating as a
 distinct cause of action what upon the face of the assize
 appears to be matter of aggravation only. Pl 311. 1 Lard 299.
 Lamer 70. 163. 197. 240.

It follows from this rule, ^{that to} that an assize in
 the assize the deft may plead as to a dec. matter
 the same facts in the same way. he may then
 plead the gen issue. Then if the Plff declares in trespass
 in the Shop & the Shop (may) pleads a receipt in full
 -his. the plaintiff may reply by way of new assize
 a "voluntary escape". this last new assize of the
 assize, the Shop pleads of "receipt". 1 Lard 299. 3
 Pl 299. Lamer 104-5. 240. -1.

A novel spirit always concludes with an avowal
that the testimony is a wrong, merited and differs
from those mentioned in the Dep't. Pleas.

This plea of new testimony & new sources, cannot be
made to excuse the Dep't. is not guilty of them. He
may plead "not guilty" Ch. Hi. New App! and other authorities.

Gen. Pleading to the Declaration,

The ancient rule requiring the setting forth in the plea all
the particulars has been removed. This may be all matter
of defence in avoidance. Co. Lit. 8 Co. 133. Bac. Ab. P. I. 3.

But in modern times gen. pleading is sometimes
allowed to avoid prolixity. I. e. the Dep't. is allowed
to plead the matters of avoidance, generally, when
the pleading specially would tend to great prolixity.

Thus when one is bound to perform a constant
continues of a great many performances, there if a
Sheriff is bound to perform all the several duties
of his Office. He is not in his personal bond. He may
plead generally, a performance.

When A. a brewer agreed to deliver
all the grain which should be thrown from his Brewery within
so many years, & the delivery was frequently from
day to day. It was said when the speech was allowed
to plead gen. performance, he cannot be put to his
trouble to have plead spec. performance. Bac. Ab. P. I. 3. 1. S. 6, 753 in
Yk. M. J. Butler lays down the distinction Co. L. 749. 916
Cout. 575. 1 Saunders. 117. n. 1. 2 ib. 410. n. 4. Law. 60-1

Pleadings

but this general plea is allowed only in rare cases when the plea would tend to great injustice.

If A has conveyed to B all the land of which he was seign at the time ^{of conveyance} then he cannot plead generally a performance but must plead (the different parcels of land conveyed) separately, as so much black acre & so much white acre &c &c.

It is another rule that all pleading on each side must be consistent with itself. Repugnancy is a fault, but in a material point it is fatal fault. Repugnancy in a point not material is regarded as unpleading and does no harm unless specially demurred to.

2 Inst 333. Co Li 303. Com Dig M. 29.

1 Mils 98. This rule applies to all pleadings in general.

Pleas in law frequently contain a

RAVISE

A traverse is a denial of some particular fact or facts alleged in the adverse pleader's plea always tendered in issue. It may be taken to any part of the pleader's statement Co Li 282 Br 44 Pl 161. Yelo. 195.

Mr. Jones in denying the different parts of the plea very widely. He claims that when any traverse is made by any party by way of incident to a special traverse, Jan 1/6-17-18-21-49. This is most clearly a mistake, & so account a while as Mr. Jones should have made a special traverse is to be avoided.

It is the extent of the traverse which determines its character as being general, a species, and so on its inducement before it. Thus a gen. sweeping denise is a gen. traverse & a denise of a part is a specimen. Now a traverse preceded by words of inducement is a Technical traverse & Mr. Jones has mistaken the word species for Technical.

I find several incorrect ideas & notions laid down in many books.

It is said by Bacon that a traverse closes the issue and is M.H.I. Now this as a gen. proposition is incorrect. A technical traverse into an abgeu flows concludes with a verification in gen. But a species traverse allows concludes with a verification of the 24. 3d ed. 213. Ten 871. 1 Ben 321. 1 Land 103. b. n. 3.

It is said that the Duff heard till in London saying that I did not see in fee and denied the law to him. The Duff replies that I did not see in fee. ^{an this is a party to the} I did not see in fee. ^{an this is a party to the} I did not see in fee. This shows that a traverse cannot always close the issue. I have before said that a traverse tends to close the issue.

But as to the use of the gen. rule it is true it sometimes closes the issue. This is not by way of E. When there is a gen. form traversed in established technical and such traverses close the issue.

The issue is said to be closed when one party concludes to the contrary, & to be opened when the opposite party adds the matter.

The technical word of traverse an "abgeu flow". The words are also technical words of denise in pleading. to say "without this the fact is so, is to say it is not so."

Headings

An "arguer" who are not in a position, for "et cum" are just as good and are equally equivocal

Law 119 & Law 22.

But to the genl I have owed that, generally a traver conclusion with a verification and does not close the issue.

I have owed that a gen-^{al} form.

^{ie.} ~~traver~~ denying the whole allied on the other side in gen-
concludes to the County then from technical terms
circumstances. Now in Supp. p. 4th & Buttz. The
Jest. plead for assent deems. The Piff may traver then
"de veritate sua per se aliquid tunc causa" Bue.
the M. H. 1. 1 Bar 317. 2 B. 439. 2 B. 364. 1 Law 103. 103b. 323.
This regularly concludes to the County, for it denies
all that the opposite party has alleged, and then it
is impossible in the nature of things to leave the pleading de-
sisting with a traver, or premise that a gen-^{al} form
as to conclude (to the County) to the County.

On the other hand a Spec. Traver should always con-
clude with an avement an avement? & Spec. Traver
are equivocal, when that a traver is not used as to the
alleged a it other side it should conclude with a verification
a avement which is equivocal. Bue. & M. H. 1.

Still the Law has precedents which have deviated from the
rule. —

It is P. 134 J. Butler that a gen-^{al} form
may conclude ~~traver~~ thus with an avement. Bue. 2 B. 445
2 Bar 1022. 1 Law 133. & c. But in truth the conclusion
of a gen-^{al} form traver with a verification is sometimes only
by precedents & not by law.

The plea from Haven de injuria is a good answer to a particular complaint of a mere fact. But when the particular complaint is a matter of record, little or no reliance, as which are matters of law this plea from Haven is not good, because it denies without any distinction matters of fact & law. It does not separate the matter of fact from the record of law, (a) But still the Pff. is not to be used, nor are the inducements de injuria nor proper & then the proper plea is to traverse the record if his object is to deny it. By doing this the Pff. avoids an unexpected trial with the other. It separates matters of fact from matters of law. Com Dig N. H. 20-1, 1 Bm 320, 5 Co 37 d. Cases 155-6

A Technical traverse which is always pleaded by matter of inducement, always includes an allegation and differs from a common negative denial not only in action but in the conclusion. This plea of Technical Traverse differs from another made known in the Law for a trial of this allegation &c. The (negative) traverse is a direct and positive denial of the ^{negative} allegation. This direct denial differs from an "allege but" in the conclusion. This latter mode always includes the country. This is the most useful method when the party traversing the issue has no occasion for inducement, i.e. of introducing new matter. 2 Sand 206-7, 1 Sand 103, a & b, 2 A. K. 364. n.

Suppose to an action on a contract the Deft pleads money which the deft would deny, the ^{def} allegated charges, the contract with various conditions as to the place where the money was to be paid, the Pff. may (then) the Deft. plea it by reply that "The contract was made for 40 per cent

(a) The Plea from Haven "de injuria - propter hoc" is appropriately admitted to answer matters of record, & applies particularly to cases of tort.

Headings

intends to give hoc: it was made to him at 6 per cent and interest
 at 2^d Lamerz reply is common negative language. "then the
 Court are in not conclusive." But the Pl. H. 1, May 98, 2.

But 321. Lamerz 145-9. 1 But 321. 2 But 1022.

The latter mode of common negative demand is
 not applicable to all cases where can it be good in all
 cases. But the following rule will show when it is and when it is not.

When the plaintiff of an inducement will make
 make a negative pregnant this simple answer
 is the better and may be adopted, in the other hand
 when the plaintiff of an inducement will make a neg.
 pregnant, then must be an abuse law.

Now whether a wrong conclusion is made of form
 of substance, it is not agreed in our Book. But
 Vol 1 it is all a general answer and only a specific
 answer.

1240 240

May 94, Co. L. 117 a 104

It takes the weight of authority at
 Com. Law to show the wrong conclusion may be
 generally demanded. But By Stat 425 it is made
 an error in form and is only an specific answer.

Butler 203, 2 Lams 190,

n. 5, 1 it 103, 285, n. 5

You observe that when an ally state in money
 is being denied by the other side in this latter
 mode of answer. The necessity of a further answer
 is entirely needless and demandable for just
 demand. The parties must answer and not in
 "intention"

is not a case an indictment is necessary to bring
its extent and application

Now in *Thompson v. Buller*, the *Def.* pleads, means, not
imposed & the *Plff.* replies that he committed an outrage,
a robbery, *Buller*, alleges he means, not, imposed
here the outrage & robbery, *Buller* is an indictment
which is not, for if the *Plff.* should say, since the *Def.* did not
guilty by his hand upon him, without stating, matter of induc-
ment. It would be open to the implication, that the *Def.* had no hand upon him.
It is an act as against the *Def.* had any that the *Def.* was
admitted against, to pay 10, in case, then if the *Plff.* explains
that he did not agree to pay 10, in case, that is a negative
plea, for it is open to the implication that he agrees to pay
9 per cent. yet in this case the *Plff.* would not fail, for the *Def.*
in such a case is bound to prove the contract as pleaded
but it will serve for an illustration of the rule
There is this negative plea, and the answer, for the
negatives to be made by matter of inducement, which is by
stating the matter of inducement and concluding with an
allege *Loc.*

2 *Leeds* 188-9, 1st N.B. 6, p. 581.

On the other hand, there are many cases in which an
indictment is wholly unnecessary. The *Def.* that *Loc.* is dead
the *Plff.* has not, saying only, *Plff.* is dead, then
that to the contrary, he had not and allege he, *Loc.*
is wholly unnecessary, In both the case of *Leeds* & *Leeds*
is not correct. Should lead the *Def.* to add an induc-
ment, which it is necessary, a rule.

When a party merely concedes a fact, the
party alleges a truth of some allegation is not good
for the statement would be incorrect, the *Plff.* would be
deprived of

The meaning of the word is, that after an offer of abeyance
has been made there must be an affirmation after the abeyance has
been offered.

Co. Lit. 126 a Lane. 121. Ben. 41. 1791.

The second import of this rule is that a negative alle-
gation cannot be traversed with an "abeyance has", for
an abeyance has is a negative allegation.

In Court when the judge of the record upon the
offer giving this notice, & the Def. pleads that the Plff.
gave no notice, this notice cannot be traversed with
an abeyance has.

This after all is a fault in point of form, for two neg-
atives make an affirmative, but the law is not altered
by this manner.

The Objection of Traverses by Com. Law, was
matter of Substance But this the great Point of Law
415 Case It is matter of form and it is only on
Special demurrer

2d ed Co. Ben. 41. 1791.

103. b.

It is a good rule that there cannot be a traverse up-
on a traverse when the 1st traverse is immaterial. For
this is merely a traverse going to the same point
as is contained in the preceding traverse on the other
side. The meaning of this rule is that wh-
ever party has tendered a material traverse the other
party must join in it and cannot demur &
tender another traverse upon the immateriality of
the first provided they go to the same point.

Co. Lit. 282. Ben. 41. 1791. Statute 17. 1791. 403. 1791.

11. 217

Headings

The explanation of this will give you in fact. The 1st
claiming from I. S. did not mean for. & the 2nd
that I. S. did not mean to be alone here" then he did
not see and conclude, to the contrary, even he
the 1st must join I. S. then both travel goes to
and the same point, that both return to
the same quarter.

But a Traveler after a travel is good even the
the 1st travel he is material, (M. 104, P. 104, C. 104, 182.)
But a travel after a travel is not then does not
go to the same ^{point} as is intended by the 1st travel
on the other side, but which travels are upon a
different point, the fact that both travelers
go to with both the same point a different point
concludes the difference. The word "here" is gen-
eral, it means the same where matter.

So as an act of Supply the debt paid a time a particular
and then travelers alone, then he is guilty of a taking
over the day, now the 1st has his claim with
to join in the ^{claim} by saying that the debt is guilty on
now the day, as he may leave the 1st travel and
leave the claim paid on the particular day, so
if the 1st was bound to join the 1st travel he would
be prevented from leaving the claim, which cannot
be. Then the travelers go to different points, that
the 2nd is not a travel upon a travel.

So as an act of Supply the 1st has a claim of a particular
and to leave off a the 1st, Aug. 1st, he must have also
traveler alone here" then he is guilty of a taking
upon the 1st of Aug. now he the 1st may join in

Of Traverses.

The first Travers and appears as that the date 23rd
was given as a plain day or the same Travers
the beginning of the Sept. here, the Travers justified
on the 18th of Aug? is one thing. The Travers Traversed
as to any plain day is another thing. The two Travers
go to two different points. Vol 104, Com-Dir^l
p 1.2, 1 Oct M. 535, 2 it 265.

The more simple and better way in this case is to
blend specimens as to the date to be avoided and as to
the remainder the Gen. for thus making two plans

In an act of trespass "quod clamor fecit" in the
case before mentioned the Sept. blend to any Travers
after the 18th of Aug? and before the date of the writ. nor
quod and the same blend there, license on the first day
of Aug? specially.

If the day laid in the prescription is the same
as the day in the dec, then it is correct to hold
a license on that day notwithstanding any antecedent
a subsequent term, for when the day is the first
of the term and the day in the dec are the same.
This term is correct, 1 Oct M. 535.

As to a Travers upon a term, there is an exception.
I think that there may be a Travers upon a term if
the 1st term is immaterial for in part, it had
to give in an immediate Travers for every term
and in some cases if it be not so. This restriction
can hardly be an exception to the general rule.

Of Traverses.

The Polar Skua is more numerous than any other species of the country, and he may be said to be a characteristic species. In some of the most remote parts of the coast, he is more numerous than any other species of the country, and he may be said to be a characteristic species. In some of the most remote parts of the coast, he is more numerous than any other species of the country, and he may be said to be a characteristic species.

When the motive ^{step} is the one or the cause of
as it is in its nature devoid of that the self (self)
-less) is entitled to seem so much as he can find a
right to claim the self, then the mind, the agent comes with
that part of his plan which is an answer to other part
of the (entire) one of the action in circumstances & the
result of the cause of action,

The Off. man is due for \$100, the deft pleads
payment of \$50 alleges that there he could pay more than
\$50. This is a bad plea for if his defence is true, he
should have made two pleas as to part of the debt
not due, & to the remainder "not guilty."

1 June 267.5269

Dr. Dr; £. 20 4/6 - 225.

The rec^d of this matter is, supposed the same to be true yet the Off^r has a right mind he seemed to ^{not} have ^{the heart} to leave us there. Yet if he was obliged to join in the team that the dept. did once in the summer would be true he could not leave the party of \$50. If the team was true, yet by the reports he is said to have got if he was obliged to join in the dept. team, I did not hear more than \$50 he and we were afraid he could not leave more of the party.

Hearings

as on the one hand is best for the observation of 3 lights. The
 Judge held on to one of the lights, explaining again for the 11th
 reason. (See just quoted as to) that he did observe the 3
 lights. The line is bad, because if the ship was closer to
 them, the observation of the light and 'aid to guide his eyes' to
 them for the one light he could not see for the observation
 of the other lights. The ship should have been to the one, a distance other 'margin'

(2) ^{inducement} When a ~~claim~~ goes to a certain point going in the
 terms admits the inducement. But if the terms
 and the inducement both go to the same point going in
 the terms is for force admit it. The inducement
 makes it public a negation of it. In this last
 case the going in the terms is only a conclusion
 for the inducement.

You the purpose of avoiding the
 admission of part of the inducement. The party may be
 a Protestation, called in court a Protestation
 Bar the M. H. 4. But a Protestation does not the
 court to do with the merits of the case in which
 it is entered. it then requires no answer
 and admits of none. It is in those no place.

Can Dig. on M. Bar the M. H. 4.

A Protestation is denied by the Court to be the effect
 of conclusion. But is it is an admission made

to prevent an implication that might arise
 out of the record between the same parties is now the

3 B. & M. Ex. L. 126

Case appears —

The example for M. is a good illustration of this case.

(2) ^{admission} appearing in the case that the inducement in the case is
 true. The terms is material and therefore a term of
 the inducement was in a sense a term of the inducement.

of Travers.

[illegible]

The protestantism, namely, protests the allegation that
against John Lee, and against the Rev. Mr. Ford
(then Lee's auditor) in my other note.

The ' is the only mode of denoting such allgation
as cannot be put in after Prov 276 C. June, 141.

It follows from the nature of a Revolution
that Esperanza will be an white town. It
is a part of the Alcedo, Com. D^o M. n. L. 1842.

 $\frac{1}{2}$ vector to the further coordinate of a trainee.

A trustee can only be properly taken a Matrimonial
Power when is a power's decision of the court. Bond.
 324, C Co. 24. a. 2 Law 3 5. 28.

If Lower M. were fairly shown to agree to it,
very immaterial his name was by May 27th
14 when he specified as O. L. & G. as common red
and it. (Laws 14, notes 21. 2nd 267. Stan 684. 2nd 219.
add. for this State of Cal. 'Vide Bur. Nat. H. N. S. Vol 12. The
System vol 11, pp 94-5. The Amer. Mus. has the same is com-
mon there. Letter 817-18. This case is thus is here confirmed.

If the Party to whom an immediate return is demanded
and he joins in the return to credit is of any kind his
guilt will be completely absolved a Populace awarded

Pleadings

It is a general rule that if a party goes against him,
making the multiplicity of issues remain with him to fight.

2 Sand 319. n. v.

1 id 228. n. l. East 371. Salk 596.

A tenant can be properly be taken only a confession
from him for the only object of pleading is to bring them to
a trial. If there are numerous matters of Law
his time is lost for matters of Law cannot be thrown

2 Hen Blk 182, Ben 44. M. S. 1.
Per Dig. M. S. 14. Hel 103. 12 Hen Blk 376, 403. Lamer 118.

Matters of Law

If the Plaintiff should have gone in before he could the
defence is lost for it is matter of Law

A plaintiff or defendant ought to be put to a point in his
pleading for this is matter of Law it is only a
conclusion of the facts stated. There is an
exception in some cases the Defendant pleads that he was
a ship and had a wife, for good, a veritable objection
he asserts the Plaintiff now if the Plaintiff should have
the Defendant a veritable objection. The defendant would be lost
for it is matter of Law. ^{a 407.} 11 Co 10. 2 Kel 607. 1 Sand

229. n. 3.

23 n. 5. 298.

Every person must be confined to a single point and
by a single point it means a single point of defence
This rule is founded upon the principle that a tenant
cannot be taken more than 1 point is disputed

This one point need not consist of one fact, it
may consist of several facts 1 Ben 320. 8 Co 66
Bul N. P. 93. 3 Les. 40. 1 B. & P. 80. This doctrine goes far
when it is said that the language of Law is to be
at first sight is correct

Of Traverse,

243

these questions about them. Several, such as, it seems
the question there is one whilst the Court was commenced
but whether they were entitled to answer.

But if two distinct species are mentioned both of them
may be treated there in an action as an other that
But in the 2^d I say may traverse the award, as the submission
but he cannot traverse both.

C. Co 24 B. 110, 338. Com. Dig. M. S. 10.

Again it may be that what is alleged is what is necessary
unless it is what is alleged, can be traversed, for
a traverse is a denial of one side of what is alleged
in the other. Com. Dig. M. S. 8. 2 Inst. 19. Salk 628. 9. Calk
99. Bar. Abh. M. S. B.

Suppose in an action on a promissory note the debt being
the debt of account. The Defendant pleads that the promissory note
is not a promissory note but it was in writing, this is not a defence
on special demurrer by Stat. 4 c. 11, and 2^d Edg. 1st.
is allowed in this case Salk 238. 1. Salk 312. b. 1. 4. Bar. Abh.
M. S. 5.

But any material point appearing in the pleading
may be traversed, though it be alleged in the plea of an
inducement or suggestion, and any other matter
should be alleged particularly. Com. Dig. M. S. 11. 2^d Edg. 169.
Salk 48. 2 Salk 206. a. n. 21. 2.

When a Party Pleads any other matter
concerning and avoids as to part only of the cause
of action, his traverse as to the whole must be
excepted with the plea and then a traverse
therein the whole gives a general issue and not
a special one. The whole should be traversed. Salk 104. 2 Salk 68.
Salk 222. C. Co. 87. 1. Lev. 241.

Readings

When a plea of non est is made, if the deft. says the plaintiff's note was paid on the day, it is sufficient for the day is identified.

But it may be said that if the deft. wishes to prove a day different from that laid in the dec. how can he do it.

The way in which a deft. can come at his right is by making a Verdict Apportionment. Bal. Ch. P. 17, Cas. 165, May 86. 3 Blk. 311.

In gen. the time alleged in the dec. is not material now as to this subject. It is a rule that if the day alleged in the joinder of plea in bar is necessarily dropping from that laid in the dec., the deft. need not plead as to the point or after any a traverse provided he avers that the act, complaint of & the judgment on the same, 1 Sand 298, Stro 694, 5 Bac. 207, Cas. P. 667, Lawes 200, Fulk 64.

If the deft. pleads, under a writ bearing a certificate, & the date of the writ is material to the day laid in the dec., yet the deft. may aver and prove the contrary and bring it within the date of the writ, &c.

If the day of the plea is not material, then the time laid in the dec. is not material, as was shown before and after that day.

As a traverse, well tested in one point, obliges the plaintiff to pay it in the traverse & then give to the jury a traverse in case a traverse be found. It is asked why and what case of law can the defendant be, in many cases, indeed it is of no use and a direct denial in common negative language is the better and more precise mode of doing the business.

It has been argued & is now generally and this in
medium is wholly unnecessary. vide Traverses.
Now I have to show that it is every case when it
is used it is unnecessary & it is not a case. A case
where denial is the common negative language is 'I believe'.

But I can never deny the opinion that an inducement
is an unnecessary & extraneous part of pleadings.

What I have shown that an inducement is perfectly
necessary to present a negative plea, and it
is not even the inducement is entirely necessary.

Again an inducement by way of protestation
may answer an important purpose in many cases
to present an estoppel. But what is its true nature
I believe that when the inducement is taken away
it appears plainly the inducement is unnecessary
nearly to pick out a complete dependence
a true answer is never sufficient to pick out
a complete answer. So that a true answer is in form
case, and an answer to a part of what requires an answer.

vide Note 1.

It is also a rule that an inducement must
negate all matter. This has been denied. ^{Baggott 501}
The objection is that an inducement cannot be a true
answer to the issue. How should it (be) necessary to contain the
-all matter.

This reasoning is incorrect
You show the inducement of the issue is not a true
answer to the issue & the true answer is not a true
of the inducement. It follows that if the inducement
contains no specific matter, the true answer could not.

Pleadings

246

When the indictment & tender go to different points
the indictment must certainly consist of specific
matter for the indictment alone must be traversed

at law - yet further the terms of the allegation
traversed, but this mode of traversing will not
always answer for it will in some cases pro-
duce a negative pregnant. (Note 2^d.)

When tender is made of the allegation traversed, and
not in issue what is immaterial, then traversing it
shall follow in more proper.

Upon an issue on the plea for obtaining by the D^y light
the D^y pleads that D^y has but one light whereas
he says that he has more, this is bad because the D^y
is entitled to traverse the obstruction of our light.

Upon the D^y pleads tender on the 1st of Aug^t & the
D^y traverses the tender on the 1st of Aug^t with the word of
the D^y plea, this tender is bad because the
any of the tender is, immaterial.

Bar. At. Pl. L. 6. Com Dig. Pl. L. 5. Co. Lit. 126. a. 353. a. 10th 493.

When may there be a tender in the words of the dec.
and when not? Answer. That if tender is in the
words of the allegation and not in issue what is not
material what is not issue it is bad.

Of Traverse.

There is an action in which the Party traversing the
 Dep't. pleads traverse not only what is alleged
 but more than what is alleged.

This case is of an action in a contract to be performed on
 a before a certain day. Now if the Def't pleads traverse on the day
 the Dep't. must traverse where the def't did not pay on
 the particular day nor before nor after that day. it is
 not enough that the Dep't. traverses payment on that
 particular day.
 2 Br 944. 4. B. & M. G. 4 2 M. & S. 173

The action is in a contract to be performed on a before a certain
 day. Now if the def't pleads traverse on the day. Now if
 the Dep't. must traverse the payment before the day hadenit
 payment, on the day, unless he traverses before & after.
 There is then a material action before the usual
 of traversing in an action in a contract, payable on a
 particular day & when an is payable on a before
 a particular day, in this latter case the action is not
 to the general must be shown. in the former case, the
 Dep't. may traverse traverse payment, in the word, "traverse"
 given as the Dep't. declares"

Suppose now a contract payable on a given day & in
 fact the Def't pays before the day, in this he cannot
 plead before the day, "traverse", he must plead payment
on the day & then the proof of the payment before the
 day will maintain the allegation of payment on the
 day.
 M. & S. 2 Br 944 Com Det M. & S. 173.

Duplicity

This is a fault in all pleading because it tends to multiply pleaders, confusion & vexation 3 B. & S. 11. Bou. Ab. Pl. R. 1. Gluk. 295. Lawes 27. 107-8. 131-2. 152.

A double plea is one which contains of several distinct & independent matters, all of which are pleaded to the same point & begins with the same words, it is alleged with (alleged) to the whole & one of the same parts of the claim or defence 3 B. & S. 142. 150. 151. 152. 330-7. Thus if to an ass. of trespass the defendant pleads a Justification for the whole & a way or privilege part of it. The plea would be double. So if he pleads any two defenses of which one is a way or privilege. It is double.

But the giving of different answers to different parts of the De. a plea does not amount to duplicity. Thus the Def. may plead the ass. of the De. as to part & a Plea. Plea to the other. as he may traverse a part & demur to the whole 3 B. & S. 304. a. Bou. Ab. Pl. R. 1.

And so cross at C. & L. & there are several Dist. in a Plea. Thus may be as many Pleas as there are Dist. & this is not duplicity. i.e. each may plead a single matter of defence to the whole demand, & distinct matters of defence to a part of it. a distinct part of it. For 70. 24th 1140. 1160. 1161. 1372. Lawes 32.

Of Duplicity

214

It is said in a case decided in Mass. that when
two depts are under a contract they cannot
sever in their defence & have they can sever
only in fact, because the Off can receive of both
only & not one. 4 Mass. 444. This must be when
they plead the same defence, ^{usually} for they certainly may
plead different defences, for it is not necessary that one
one of the depts assigns liability with the Off & then
to join in argument. 3 Sup. Cas. 75. 5 id. 47. 207, note.

Duplicity consists of distinct & independent matters, and therefore
there is to compare and contrast.
It is thought a rule of the C. Law that any plea must
be entire, entire, connected, & confined to a single point,
3 B. & M. 311. But this has been not uniformly carried
of a single fact. Many connected facts may be used
- as to constitute a case of entire defence, now is an
action, and an answer, the depts must plead the answer, the plaintiff the
affirmation of matter the answer 46 &c. 1 B. & M. 320. 2 B. & M. 1028. But the
Off. K. 2. 3. 3 Talk 142.

And there is one particular action in which no time
can be spent in raising of number to the matter of defence &
this is an action of real possession of the debt. Plead,
"probably can" to establish that "probably can" the
may be a great train of events.

Ex. 871, 800. Ex. Dir. 533-4.

The same rule applies to "plea in mitigation", the Off. pleads that
he was a thief and arrests the Off. on suspicion of felony, now
then the Off. may set forth all the circumstances qualifying the
ground of suspicion, the replication de non talibus talibus canum
is an answer to the whole, 2 Hawk 121.

Pleadings.

And then *per* our mention begin our distinct
 answer, and so answer our wish in the premise which
 is not distinct.

in Habington

On the other hand, if the defendant who is an out of
 the Court constitute the answer. Then the parties are
 out of question, & then his plea must be distinct.
 Rep. Dig. 526.

Again when one of the facts which upon is a consequence
 of another fact may be pleaded, as the Def. pleads
 "I am administrator" and as a consequence. Then he has
 nothing in his hands. Com Dig. M. C. 2, Plow. 140. & Rep
 320. then one fact necessarily follows another and of course
 no duplicity.

The duplicity in the Dec. consists in joining in one
 Count numerous distinct grounds of action either of different
 or of similar kind to establish but one right of recovery.
 Thus in *Spencer v. the Piffin* an Ct. should decide
 upon two premises at different times, in one Count.
 Example your friend in *Wentworth*. Then the Def. was a Newa
 and had agreed with the Pl. to deliver grain, upon a receipt of
 the Contract the Pl. took an old charge, the Def. with the new delivery
 and also that the Def. had mixed ashes with his grain. He was
 a charge in *Cont. & in Ind.* what under it an *11* Rep. 365. Civ. Car 20, Com Dig
 M. C. 38, Abatement P. 4, Ac. P. Ld. Ray 404.

But as to the Counts in one Dec. each count
 has its own right, whether they are intended to establish
 one right of recovery or several, do not by themselves
 constitute duplicity. Upon the fact of the de-
 fendant's different distinct counts are supposed as two
 distinct grounds of action.

Yet if one Court begins differs answer, that Court is double. 3 Bk 295.

But the differer matters allged to be the differer answer and therefore, imploring move never will constitute duplicity. Thus if one pleads two defenses the one being frivolous so as not to be even taken notice, not make the plea double. Thus if the Court the defendant pleads Plaintiff I responded that he was answer ready to pay before judgment. This rendering to pay later is frivolous & superfluous. But see R. 2, 1 Kib 661, 2 Wils 376.

That in all on Bond the spirit of move then one breach of the condition in the explanation is duplicity at Court. Thus the then should be in no many breaches in point of fact yet the Plaintiff cannot spring a but one breach at Court. For one breach entails a forfeiture of an entire penalty. This must be the rule now as well as at Common Law. See 11 C. 33. 3 Talk 108. Cont 297, 2 Wils 267. But see R. 1, 1. 5.

In Court before the Plaintiff may allege as many breaches as he pleases for this is not an action but a breach in entire penalty for the breach of one entire condition. But it is an action for the recovery of damages which he can recover only on the allegation of the several breaches. Though they stand all well. See 11 C. 33. Co. Cas 176. But see R. 1, 1. 3.

In this State the Plaintiff in an action on a bond is liable only for the actual damages sustained by a breach of the condition. On the report the penalty as an "in Terrore" but as a legal debt. There is in R. 1, 1. 3. 11 C. 33. (There is) a similar provision. What is to affect the actual

Plaintiff & Defendant.

damages sustained, so that in England now the Plaintiff
is able to find any person several times over & Phil
1816. 111. 2 Bur 820. Com 357. 8 M. 126. 459.

I think that this English Stat 8 & 9 M. is adopted gen-
erally in our States, for the old law is unconscionable.

The Court can plead but one plea to the action
But now by the 4 & 5 Ann Double pleading (i.e. per-
mitting) is permitted to the Defendant by way of plea to the
action. He may now by leave of the Court plead
any number of distinct pleas to one and the same
43. Sec. The Defendant may plead both before and after the
Laws add. & before & after the trial. He may
plead not guilty, a justifier a true owner, in-
fringement and so on in a separate plea. But
N. B. 3 B. R. 308, La Ray. 1099, Lawes 27-8.

This Stat has effected a great improvement in the
Law, for it often happens that the defendant who is
in our hands, has a very good defence, now he may
by way of mitigation of his guilt, plead to
mitigation of his plea, & it would be hard to say that
an plea in fact, had he plead another, advantage would have
been taken of the old plea in mitigation.
We have now a Statute of the same
kind enacted in 1815. before this Stat, new trials were good
on writs of error for the misjoinder of the plea which he had
made the plea which was good. When there is no such Stat, the
rule of the Court must prevail, Stat. Com. 43.

This Stat that the Court has no other plea
than those in the power of the defendant to the
described does not extend to dilatory pleas nor
any frivolous pleadings.

So the course of the Court is much amended,

Of Duplicity

253

The deft cannot plead more than one defence in any plea except pleas in Bar. But the Pl. K. 3. Com Dig N E. 2.

If then the deft should plead in general, & the Plf should reply that the count was for robbery, & also that he proved the coming of full age for the robbery in answer. When the deft does plead more than one plea the Plf may reply to them all.

Duplicity is a fault in pleading only, and runs in substance. The fault is that the plea contains too much and ^{not} too much. By Stat 27. Eliz Ch. 5. advantage can be taken of duplicity only by Spec. Assumps. at Common Law a gen. assumps. was good. Now the duplicity must now be pointed out specifically by the Party claiming 1 Saund 337. Com Dig Pl. C. 33. c. 2. Fulk. 219. 1 Wils 219. Barch. Pl. K. 1.

But if two distinct and sufficient answers are returned by the deft. one given in bar and the other in abatement of the other and the other party does not choose to demur he must answer both defences. Otherwise his explanation would be defective 1 Stu. 272. Bar. Pl. K. 3. 4 Jac. 119.

The Party then may traverse both of them if he does not demur but he must take care that each of them be single.

But the rule requiring the demur for duplicity. the Spec. does not extend to the impropriety of stating i. e. when the Plf joins different & incongruous counts of action. that impropriety is not duplicity. The impropriety of action is an accidental fault. 1 Fulk 10. 3 Lev 98. Ray 233. 1 Y. B. 276.

Pleadings

Pleas and Over.

It is a ^{rule} of Law that when a party declares upon an otherwise plead a deed or makes title under it he must make perfect of it. I.e. he must aver in his declaration that "he brings the said deed into Court," Com. Dig. M. C. 3 Bk Appendi. 22.

This rule contemplates a deed made and title made under it. to make title under it is to find the title claim in the deeds depend upon it.

This purpose is that the adverse party may have a copy of it & that the Court may inspect it. When the Court must inspect it to see, the constitution and law as effect of a deed, is matter of Law. 6 Coke 38. 10 d. 93. Bac. Ab. M. C. 12. Com. Dig. M. C.

The adverse party when entitled to oyer is supposed to be the law to be unable to plead his party without it. I think he is not bound to plead without oyer. I.e. if he comes oyer and cannot obtain it he need not plead without it. But if he does plead without it, and does not demand oyer, he waives the purpose. 6 d. 283. Fulk. Bac. Ab. M. C. 12-2.

But Pleas is required of no other instrument than a deed. a writing under seal. Pleas is not required of a Bill or a prom. note. For they are not deeds as to the action is found. only evidence of a value given. & the Law has made no distinction between sealed instruments and sealed writings. Ch B 185 Sunday 243.

Of Pleading and Oyer.

Yours - in B of Ex. by Pleas of the Deft. plead, a copy of it. 235
may be produced. This is by rule of practice

Yd 532. 1 Feb 215.

If a right remains by deed might have passed with out
deed the who claims the right, in pleading is not bound
to plead the deed. and if not pleaded it can be need
not make protest of it. There is a difference between
pleading a deed and making protest of it. Pleading of a
deed sets it out in its terms &c. but protest is but the protestation of it
in court.

Thus if the party plead an ^{issue} against
by a claim, now by Com Law he need not make a protest
of it a declaration upon the claim, because an ^{issue} of a claim
need, not be made by deed.

On the other hand if an ^{issue} against a right remains would
not pass by Com Law without deed, and makes till
under it he must plead the deed and make protest
of it. for in such case if he does not deed he
shows no claim of action or ground of defence.

The Com Law requires all incorporeal rights
to be proved by deed 6 C. 1. But 119. 34. 16. 156. But the 14. 172.
1. Land 9. a.

But the the right would pass without deed yet if
the party plead the deed and make till under it he must
make protest of it. Land 27. 2. 1664.

But in case a claim when the right would pass by
Com Law and he plead the deed without making till under it
he need not make protest of it. In. How can this be
Answer, When the party pleads a deed and found his
defence upon it with the other party may & must plead to
that deed. but when the party pleads the deed as a
title, under under it the other party does not plead to the
deed.

The deed is not the gift of the entire Fee is no answer.
8 M. 573. 10 C. 92. 606 38. a & b.

The rule being proper is a general rule of Law that
no one should be put to a trial - may plead in what
his title is found on it. he need make no proof of it.
because it is supposed that the Thorgo cannot say
any out of his own claim, committed the deed. that I have
in his possession. The law is supposed. 10 C. 94. 1 Ves. 344. 3 L. 80. 1. Samuel 9. n. a.

And it is a general ^{rather} rule that one who comes in by operation
of Law is not bound to make proof of the deed that
he pleads it and makes title and it. because it is supposed
and that the party in this case has not the control
of the deed. Thus if a woman comes in by descent, pleads
title from a deed given to her husband. then she need
not produce the deed, because she is not entitled to it.
it belongs to the heir at Law C. L. 225. 5 C. 75. Bar M. 7. 92.

But this general exception there is an exception, which
is in the case of tenant by curtesy. who makes title under
a deed to his wife deceased. then he must plead purchase. because
he is presumed to have possession of it. then he comes in by
right by operation of Law. he is entitled to the deed under
his own deed.

Bar M. 7. 92. 10 C. 94 C. L. 226. a

But then who are called parties to deeds must appear
- but when they plead title and then plead with respect
to this must do it in all cases in which the original
Parties themselves would be bound to make proof
if they plead the deed. If an L. pleads the deed of his
father he must plead a purchase for he is supposed
that the control of it, in case C. L. 267. 34.

Of Trover and Tye.

267

The different sorts of injuries I must explain under the title
of Trover. If an Exec. pleads the death of his Testator, he must prove
it. This is a point of representation. The heir who claims from him the
Ancestral property by blood. The feece of an estate claims from his
heir by virtue of estate, in all these cases the death must
be proved & proper manner.

But he who pleads a record and makes
title under it need not make proof of it even tho
the record be of the same Court in which he is sued, & further
if it be in a different Court. The general rule respects property
to be made only in cases of death. The record is never
the property of an individual, a record belongs to
the Court and no individual is supposed to be able
to produce it, for a record is to be kept at a certain
place that it may be inspected by all persons at all
times, But N.P. 252, Fed 529, 6 Mod. 237, Plac. Co. 28.

But he who pleads Letters Testamentary must
show title thereto. These are not records tho they can
now be seen tho an attested Letter Test. are sealed
documents from a Secretary of State directed to an individual
and are his property, Lawes 86.

But a Private Act of Parliament may be
pleaded unless he pleads for it is a record, he can at
most have but a copy of it & the entry is not pleaded,
Day 476, Lawes 98.

But there are cases of necessity coming under
the general rule in which proof is dispensed with
as when a death is lost by time a casualty, here no
proof need be, for then it is impossible to deliver it,
and the rule is the same when the death is in papering

Readings

258 L's adven. puz. 5 Co 74. 6. B. a 3 Y R 151. 1 Mils. 16. The 1186.
Peab. Co. 29. 2 H. 134. 243.

But to send the plead'g good is not cause he must
state the spec. facts where' dispute will arise. L
must plead that the deed is lost, by some a counsel
a that it is destroyed by some a counsel, as it is lost
or sent in. This is the case.

At Con Law when the deed was lost a deed was made,
was no more thing as plead'g is. Sent was made
to Courts of Equity

1 Feb 14. 15

Nov 109. 30th 17.

1 Dec 392. 30th 18.

If the plead'g is not a can does by plead'g plead'g.
perhaps a deed lost or destroyed & the opposite party demands
a decree cannot be granted a perfect decree. L's deed had
not plead for a part of present, of course might not go as the
Plff. The Plff. has a right to the deed. — But to avoid the fatal
consequence as to the Plff. the Court will
allow the Plff. to amend his dec. and this is 16. 3. Y. 16. 153. n.
state the circumstances to explain the defect, this
will be as to loss of deed, La Coke says "Quia habet
tunc a man would suffer from the loss of his own deed"

By the Con Law the omission of a defect was matter of substance
and it is a general rule. But now by the 14 & 15. Hen. 4. 4 Ann called the
stat of amend. Therefore no advantage can be taken except by
other decree. Case 32. Nov 30. Cas 6217. See the Pl. 17. 2

When perfect is made the adven party shall
Plff. & Dff. may even offer it to him it read. But L's
it is not all. But he is entitled to a copy of it. made out
by a proper Officer of the Court. 3 B. 11. 299. Nov. 21. L. 17. 16.

But the adverse party is not entitled to Oyer of the deed
 the plead will suppose of the parties was necessary
 and the party pleading makes no title under it, for the
 paper is nothing more than a mere paper. Talk 49.
 2 Mils 395. Doug 476. 477. Sid 529.

What if paper is received, made up of L
 who pleads it makes title under it. Oyer is demanded,
 because here the adverse party has a right to plead to
 the deed. Suppose in a writ of d. down, in which the
 pleads the deed to her husband, which she is not bound to
 do but as she pleads it, she must produce it,
 or, anet.

The granting of oyer when it was not deman-
 dable is not error. But refusing Oyer by the Ct when
 the party is entitled to it and assigns it, is error. If the
 Ct grants oyer where it was not demandable the act is
 done and a reversal has no effect. But in the latter
 case the refusing of Oyer might be great disadvantage
 to the party entitled to it. — Talk 498. Callod 28. Sid Reg 969

But to take advantage of ^{the refusal of} Oyer. The party
 bringing it must enter his plea of Oyer in the record
 and otherwise the record could not appear. This Oyer is
 in the nature of a plea, to this the Ct will receive
 a counter plea, upon which an intention to judgment

There is another mode of taking advantage upon
 refusal, ^{which} is by filing a Bill of exceptions.

On Oyer granted the party moving is sworn into the
 deed recited in the record, & then take advantage of any
 defect in it, as illegality, or badness, &c. he may take advantage
 of any condition, which it contains.

Pleadings

3 Blk 299, 1st. 4th M. 12-2, 6 Nov 28.

If any irregularities, irregularities, a defect appears when the plea of it the court may be taken by decree. That if the ground of objection does not appear upon the face of the instrument the party may take objection by amendment & Proof, 21 M. 342, Lanes 89.

That if the deed is falsely recited by the opposing party or other, the other party may sign judgment, or for want of a plea, for the party reciting the deed shall agree to set out the deed exactly as it is, & that a false recitation is a recital of this Court's agreement. Then the party pleading the deed may also procure it to be enrolled in the public office in other place by the proper officer of the Court and may then decree, 4 M. 370, Calk. 301, Com. Dig. M. C. L. Stat. 227, 1 Sam. 8, 7. C. 316-17.

Departure

Departure in pleadings is the deviation of a former claim a defence or another, distinct from the former, and not following it. That of course is a fault in pleading and an important one, every plea must follow its predecessor. Thus the replication must follow the Decree. The rejoinder must follow the plea in Bar, &c. and so on. Bar 4th M. L. 3 Blk. 310, Co. L. 303. b. 304. a. 2 Hen Blk. 280-

If a party pleads in Bar a response is given and in his rejoinder the defendant says he will as if he takes a gift in tail, then is a departure by abandonment.

If the matter first offered a plea is pleaded as at Law, a subsequent plea pleaded substantively a particular question, is a departure.

Of Departure

271

If to converse in an instance of apprehension, the Deft pleads the
 force of the Pff replies the custom of London. This is a deba-
 ture, for the Pff pleads at com Law, & explains it by a cus-
 tomer custom, which cannot be; & if this departure was allowed
 the pleader would be injured & then never could be injur-
 ed -

1 Lev 81. 1 Kel. 376. 469. 512. Brounch Pl. L.

It pleads a plea of right by com Law is not justified
 by neither place showing a true right. The latter plea shows
 it is a common.

Thus in *Thompson v. the Pff*, the Deft pleads
 the Pff, because the Deft pleads a justification, as that he
 took them "dumy-because" here if the Pff replies that
 the Deft drove them out of the County, the replication is
 bad tho the driving them out of the County is a trespass by two
 ancient English Stat. yet he just declared on his right at
 C. Law, which creates departure in pleading if he replies *tho*
that -

3 Lev 48. Brounch Pl. L.

That if one in his defence pleads a Stat and the Deft
 pleads that the Stat has been repealed a replication
 that the Stat has been revived is no departure, for this
 Statute the original ground of action for the action
 is founded on the provisions of the 18th Stat. the latter Stat
 continuing the former Stat is *Ex parte* Brounch Pl. L. 1 Lev 81.

In converse between if the Deft pleads
 performance, & the Pff replies non performance of some
 one particular act, a reply that he was ready to
 perform that the Pff prevented him is a departure, for
 it is varying the ground of defence - B. L. 304. a.
 1 Lev 10.

So, No one as a Count the Deft pleads Infancy
 the Pff replies minority, now if the Deft pleads a release
 this is a departure, now this release would have been
 a good original defence. Sta 442

Readings

Phil. *volving* *in* *a* *immature* *pair* *from* *which* *is*
before *all* *in* *the* *same* *side* *is* *not* *a* *defect*.
I.e. *a* *valley* *from* *any* *direction* *which* *is* *not*
the *goal* *of* *the* *action*. *is* *not* *a* *defect*. 1 *Les.* 143.
Volled. 348. *Ballantini*. *the* *Line*. 241² 3.

When the grammar is allowed gen. in the dec. a
more particular statement of the cases of verbs & way
of applying it is no departure, the action of New Eng's
has been stated. 3 Blk 311. Bro 25. 17. 3 Mc, 20. 2 Le Blk
555. 1 Sam 28. n. 2 & 5. a. b.

A. New app! is not changing the cause of action
it is only particularizing in the defendant the cause of
action, which was stated in the dec. generally.

Exposition relates the bleeding on general
Alumina, I found so much clearly the same as
deposited, opening on this basis. Feb 22. 2. Aug. 22. 94.
The 412, 2 Mils 96, 1 Ch. M. 623. 2 Lams. 84. d. d. d. d. d.
1 Ch. M. 623. n. 1 Lams 117. Can. Dig. Pl. 410. a Dehydration
Lumen is acid by iodine. Aug 86. 1 Lams 110. Feb. 689.
2 Lams 84. 1 Ch. M. But when it is said there a deposit
is added by iodine, it is supposed that what is added
by way of deposit is in substance good, in other words
It is presumed that every appears upon the whole
lead to outside the body depending to pig. Why then
is it not added by gen. alumina, Bism. The alumina
does not contain the great pleads,

When the deep pleurisy is true, the pleuritic
surface, the air enters a column, now if the pleuritic
seems the ulcer does not connect the column being
it is thickened. But if a vesicle is found, then from
the column the air is sent to the lung.

Demurrer,

A demurrer is a denial of the legal sufficiency of the allegations demanded to. If there admits such matters of fact as are well pleaded in the allegations,

but denies that those admitted facts are sufficient to sustain the adverse parties allegations, and therefore to the effect of the demurrer, 1 East 636. 3 B & A 14. B & A 14. n. l. Com Dig Pl. 9. 95.

A demurrer avows a legal proposition & not a matter of fact. viz. that the allegations on the opposite side are insufficient in Law.

As a tenant denies the fact itself stated in a demurrer denies the legal operation of those facts in favor of the party pleading it.

A demurrer is not a plea, but an excuse for pleading it denies that the party is bound to plead. & hence the right of the Ct. whether he is bound to plead or not. all cases depending is in cases 3 Mc. 292. B & A 14. n. l. 3 B & A. Appendix 23-4.

A demurrer may be taken to any part of the plaintiff's claim. 72 a. 5 Edw 132. B & A 14. n. l.

All Courts in demurrer with special a general avows no other facts than such as are well pleaded both ^{into} matter & form. as Courts the demurrer to a defect in substance or form. was the law.

But by Stat 27 Ed 1485 (Ch. a Gen demurrer

Headings

Compels all with informal allegations as are cited
by these notes, & they are all formal defects as you
demand, when the only objection to the pleading demand
is that it is faulty in form & form. demand compels
but a free demand does not. Co. Dig. 229 527. 4th. 36.
233 1 Lamb 338.

There is no doubt that if the P.M. upon some pleading
will not other will not the dem. demand with generally
a free. The P.M. will then just a free. Pleading will
be P.M. upon the demand an informal pleading in form
if form, if the P.M. demand you. The P.M. would then just
upon all the pleadings, but if the P.M. the demand,
the P.M. will not then just for the demand is good.

2 Mils 248. 12 218. 2 Lamb 279 280 Lamb 167-9

A demand must necessarily admit facts not well stated
for the sake of argument, i.e. for the purpose of demand
the sufficiency of the facts pleaded, as in Chancery, become
admission. This admission then could be no trying it.

When then is necessary by the ^{not} ~~admission~~ of facts

It means that it does not enable them for the purpose
of concluding the party demand.

A demand must contain facts or allegations which
entertain what already appears certain in the case, thus
if the party making ^{a copy of} an allegation and afterwards makes
an avowal contradictory to his admission. a demand will
not compel this avowal. This avowal is not
well plead. It appears upon the face of the case
an avowal which he was entitled by law to make
3 Les 134, 124. Co. Dig. 35. Lamb 168.

Headings

27th Feb. Let Holt says down ^{a rule} "or Cond. which to me is in-
soluble - ^{Let Holt say, it down as an exception to the general rule.} That when a demand to be placed is debated,
it is not apparent then because the demand itself may
be demand the Cond. 306. What I mean by this I
cannot say, I do not know. I cannot find this matter. That the
it is not Law and not even paid any attention to by any
of a - authors. Feb 21st, Lane 4,

When we make demand the other party must
join it. Now when we join in fact is treated the ad-
mission is not always led to join it, been - as if
a fact may be immaterial, but a demand can be
be immaterial even if taken on the most immaterial
material fact. ^{For it} looks back on the whole trend and not on
that particular immaterial point, so that it follows that
the opposite party must necessarily join in it.

Demands are either General or Special.

It demands are specifying spec. and particular
for demands in general.

The parties must spec. the particular, mistake a defect
in which it is found is a spec. demand. But Mr. P. S. Law 14.

Mr. Lawes ¹⁶⁷⁻⁸ says that spec. demands are introduced
by Stat 27th Ch 5. This is very misdirect, for requiring it, for
clearly all demands were special.

They were by those Stat. and the numbers in code
and can be which at Law a gen. demand would be known
and all parties. 1 Stat 37, Ch 1 Stat 240 Stat 232.

To constitute a spec. demand the demand must
be must be not only a fact but the cause specified,
Requiring the cause in a gen way does not specify spec.

Of Demurrers, At Lord. Hall Sept. 277
one in demurring spec. must say his purpose when they
quit what he expects. Lat. Reg. 11th. Comb 297. Bur 11th 115

of the dem. reaches all defects which can be reached
by a gen. dem. in this kind but even admissions may be
taken in pleading generally may be taken advantage of by the
demur.

That a spec. dem. will reach every defect which
a gen. one cannot.

All substantive defects are reached as well by a
gen. dem. as by a spec. dem.

But by Stat 27. Bin 415 Ch. defect in form can be only
reached by spec. dem. except collecting pleas, at Com Law defect
in form can be reached as well as in spec. dem. Bur 11th 115.
10 Co 11. Co Lit 72. 3 Plk 315. Com Dir 11. 9 516.

When there is no defect in form or substance in pleading, and
is good on general demurrer.

But admission
to a dilatory plea always be taken advantage of by gen. demur
it was for the object of this that to add dilatory plea. They
to active defects means formal & requiring the party demur
to set out precisely the defect. Lat. Reg. 105. 337. Auth 194. 345. Bo.
1 Ch. 11. 456. 2 Ch. 64. 682.

The Stat of Bin 27th introduced the rule, that gen. demur
would not extend to defects in form generally the Stat of Ch. after
recalling the rule of Bin extends the rule to certain particular defects.

The Stat of Bin does not extend to substantive defects, indulgent procedural
a defect in form or substance. Stat 4 Geo 2. extend the rule
to active or formal defects. Com Dir 11. 9. 7. 1 Ch. 642.

In all pleading two things are necessary 1st that the matter
be material. 2nd that the form be substantive, a sort of error of the
in good general of demur. If the defect is formal only, a
demur there will not be an admission must be specific

There is an exception to this rule.
It does not hold for the purpose of leave agreed and the
defendant in answer pleads to the 2^d in the 1st act, saying
no answer shall be made to the 2^d plea. The 2^d plea will prevail
that his plea be imposed upon. But this class of cases the cause
of action does not appear until the replicat is made & the
replicat is a supplement to the dec. The replicat has
no claim. The particular ground on which the 2^d is entered
becomes. The replicat has in ^{one} of the acts of pleading and
it is considered as attached to the declaration, a defect in
the replicat in the order of title of merit, is, from the plea
of the 2^d in the 3^d Co 52, 8 Co 120 b. 2d Ray 1080, Cro Jac 133, 22/.

If an plea is then out of record going to
the whole dec is deemed to and found perpetuit perpetuit
(the defendant to the dec) be for the def. 2d Ray 149, 2d Ray 80.

It may be deemed follows the nature of
the pleading demanded to, the rule is the same in cases, short
of felony, in Capital offences, in procurator it the procurator
to the indictment and ^{his demand} is covered he is still indicted in pleading
to the merits. This is averred in the proceedings in Part in
civil cases. This pleading is called in "favorem vitae" 4 Bth
334, 338, 2 Lush 334, Cro 146, 2 Hale Pl. Co. 289, Hale et al. quinn
entry 15th rule, 2 Hal. 257-263-315.

There is a species of demurrer called a demurrer to evidence.

A certain case when the pleading terminates in a plea
of fact one party may take the examination from the jury
at the last by demurring to the evidence. Co Litt 72.
1 Ray 404, 1 Burr 313, Burr 4th, 17 L. J.

This the called demurrer to evidence will be found objectionable to a demurrer to facts shown in evidence & this is what distinguishes it from demurrer to pleadings, now a demurrer to the Pleas is a demurrer to the facts in pleading, & a demurrer to evidence is a demurrer to the facts shown in evidence.

This demurrer to evidence is taken before the party deems it advisable to call any evidence in his aid, for there is no such thing as a demurrer taken to the evidence advanced on both sides.

1800 570.

It must be taken also to the whole of the evidence admitted in support of the issue and not to any particular facts. For a demurrer puts an end to a trial & is taken whole of the proceedings, & if demurrer can be taken to the evidence that party only who takes the case before the jury. Under the Pleas then, the best evidence cannot be demurred to.

The relevancy & admissibility of evidence is always matter of Law, is always matter to be determined by the Court. But its relevancy being established and the evidence admitted the question how far it shall be admitted to establish the issue is to be tried & determined by the Jury. Jony 360. 24th 205.

It follows obviously that it never can be proper to demur to evidence which is clearly relevant to the whole issue, however weak that relevancy may be. Evidence is always relevant to that issue which it is necessary to prove. The question whether that which is relevant to that issue is relevant to the issue is a question of fact. The question whether this or that evidence is relevant to the issue is a question of fact. 24th 205.

This demurrer is not in aid of the question of fact & refers to the Ct. the applicability of the Law to the facts there in evidence in support of the issue. This demurrer admits the facts there in evidence and like other demurrers denies their legal operation in favour of those party, i.e. it denies that the facts there in evidence are sufficient to support an issue. See 11 M. & W. 7. Co. Ld. 72. 2 H. Blk 205-6.

In the matter of the thing the facts must be ascertained before the question of law can arise, under the demurrer. 2 H. Blk 205-6. Hence arises the necessity of a party's pleading what the facts in law are, and demanding the law to be applied to them, upon the facts and without making what he cannot deny.

When the whole case is stated in support of the issue in dispute, there is no need, as in the case of a demurrer, to state the circumstances in support of the facts, must prove in the demurrer and admit it. When the case is stated as a whole, it is admitted as evidence. Till it is always said that the facts must be proved first. See 11 M. & W. 7. Co. Ld. 72. 2. 3 H. Blk 372. See also 11 M. & W. 7. Co. Ld. 72. 2.

But the question here for the party open is, how evidence is to be proved in it, it is not settled by old authorities, those who hold the negative opinion, that there is a demurrer in denying the facts, evidence. See 11 M. & W. 7. Co. Ld. 72. 2. 3 H. Blk 372. See also 11 M. & W. 7. Co. Ld. 72. 2. The true authorities now cited are in support of the demurrer, Co. Ld. 72. 2.

At this time however the rules are well established that there must be a demurrer to particular evidence, by stating the following rules.

1st If the fact is settled that the evidence is, in
 both parties may agree to join in a demand to it
 in court.

2. It is now well settled that if any of the parties
 produces any evidence to prove a fact definite the
 adverse party, by distinctly admitting the fact, is
 bound to demand to it. 2 H Blk 206. Allen 18.

It is now well settled that if any of the parties
 produces any evidence to prove a fact definite the
 adverse party, by distinctly admitting the fact, is
 bound to demand to it. 2 H Blk 206. Allen 18.

3rd It is now settled that if the fact is certain the
 evidence is sufficient of the fact is certain the
 adverse party, by admitting the fact, is bound to
 demand to it. 2 H Blk 206. Allen 18.

The word "Certain" is used to signify direct & explicit
 as contradistinguished from indeterminate & circumstantial
 evidence is not used in every
 case. "I believe it is". Now this is not certain & direct
 it would not be admitting certain evidence.

4th If the evidence produced is loose & indeterminate
 the adverse party cannot demand to it, without ad-
 mitting it. In the case of the evidence as certain &
 determinate, but by making such admission, as
 certain & determinate he may demand to it. The
 party must join in a demand to it. 5 C 104

Vol. 11 p. 313. 2 H 13 12 209

But the party offering the evidence is not bound to
 in the common rule, such an admission is made, without
 such facts the fact testified about is not admitted
 an admission, it is to be true. Suppose at large under
 to establish the fact of assault on the part of B. D. by
 as amounting to a confession, and for the purpose of presenting
 the fact of the commission of the crime, the witness
 says "my impression is that such was the fact," and if the
 off. admits this testimony to be: "he does not admit
 the fact of neglect, but only what the witness testified,
 and does then to enable the off. to deny. He must
 state the testimony to be proven and denied, and say
 that "I believe the facts are so," but that "It was so, when
 such and such certainly would not be good -

5th If the evidence offered in support of the fact is cir-
 cumstantial. The party admitting the evidence must
 admit distinctly upon the facts every fact which that
 evidence conduces to prove. Because if the admission is not
 in this form the fact is not admitted and the Off. can
 make no reply. See 114, 127-9. 2 H 13 12 207-9. (See
 N. P. 313. Allen 18. Why is not an admission enough?
 Because there is nothing added to the Off. but a question
 of fact instead of law.

What is circumstantial evidence? This is evidence
 of some distinct collateral fact, from which the
 principal fact may be inferred as a consequence. And
 the weight of such circumstantial evidence may ^{be} ~~be~~
 with the popular notion of the probability of the fact.

He is one of the best of the M^{rs} gods. The M^{rs} will
 upon the fact of this being in the D^{ts} paper, upon
 the basis, to say that he was the god in the paper of
 the D^{ts}. was upon the D^{ts} chosen to claim that
 he does. He must admit every fact & every con-
 -clusion from such fact which the jury might infer
 from. so that it is impossible for the D^{ts} to claim
 in this case for if he does he admits the fact of
 taking. But there are cases when the way to a claim
 by admitting all necessary conclusions from the fact admitted.
 The most celebrated case is in 2 H Blk. Gibin & Hunt.
 arose out of a very celebrated affair in B of C. to the M^{rs}.
 & some other study payable to the side of a private
 paper in the paper the coming. The holder was aware
 of the fact. It was held that all the parties draw
 the bill payable to the fictitious party were bound. The same
 as the fictitious party would have been had there been a person
 in reality. The M^{rs} offered some circumstances
 under to show that the D^{ts} knew of the fiction of
 the party. The D^{ts} denied to this fact without ad-
 mitting the fact of fiction's party. The Ct held that
 if the case had admitted upon the evidence that
 he knew the fact of the fictitious party, which being clear
 the Ct would determine whether this was sufficient to
 bind the D^{ts}.

When a the five gen well pleasing the merits
 of the admission of novel evidence who demanded to.
 When under an admission adapted to their end. The
 fact of denying to evidence ^{was} permitted for an time before
 the rules established. (Seyth) demand to evidence, was mentioned
 in its effect & merit, and in account of its merits and
 tenders to draw the attention of the public in the
 trials of pleading, it was that very little known in practice
 but was now the rules established Jan. to be a common & frequent

If the party claiming under the 4th & 5th rules does not make
the answer required by the rule, the defect being
in the answer being in the answer. But if the answer
joins does join, it amounts to nothing more than delay
of the Court (Court, and more - no just for the
would be no question of law making the answer &
not just. What the court can do is to order the
answer to be filed. See 1st 313, 2nd 313, 3rd 313.

The second point is, if the answer is made, is, that
the answer is made to it, sufficient in law to require
the ^{first} party. But after the answer is made, the
the defendant party may move to amend or put in
the answer of the pleadings, which is one of the
rights of the party. If the Court order the answer and hold
that the answer is sufficient to require the party, but if
it is found by the Court that the answer is not sufficient,
it is not a just party, the answer is not sufficient,
if the Court order 238, 213. See 313.

The party claiming to answer cannot as of itself
and of course cannot make the party to join, but the
answer party may always demand the party to join
and whether he is bound to join or not. This cannot
be done unless the pleadings, for the party to join, in

If the party proceeding should demand a copy of
and are restricted by the Court to write delay party with
most extended & further circumstances, See 1st 314,
See also 136, 2nd 314, 235-8. See also 314.

Arrest of Judgment Pleadings,

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To arrest just is to stop it. This is done in motion
referred to the writs & entered on the record.

Motions of this kind are made, and ought to be
if not then & verdict found. 3 Bk 386 399.

The ground on which a motion in arrest of judgment
is made is: That as the jury of the C. is a mere
creature of law from the facts ascertained on the
record & must be guided by the whole law. That
party who does not use the whole law and
not attend to facts, cannot have it, tho a verdict has
been found. And he can on a demurrer as to the demur-
to the record - and then moved, for after all these things
may still be a motion made in arrest of judgment.

The error found by this motion is an error in law,
& the motion is always found for some particular cause
that is from some fault, appearing upon the record
and itself, when for example, the dec. verdict, contrary to
the writ - has the N. O. of the writ, he cannot have
just for the writ is in error, 3 Bk 398.

The jury may be arrested with some error of fact in
the pleadings, a defect in the fact, or a defect in the
verdict.

For some defect in Pleadings;

If the dec. is wholly invalid. The Plff can then
no longer the verdict has been obtained. The verdict is
but no right to it. it is but a finding of the fact,
on the other hand

When the dec. is good & the Deft pleads a verdict
is obtained a verdict the Plff may on motion have
the jury 3 Bth 395. Co E 778.

Suppose to an action of debt a bond the Deft pleads
not guilty - the jury find not guilty, here is good cause
of action or a count of jury?

Suppose to an action of debt a bond the Deft pleads
the Dec. pleads that he has no bond as found by the jury
find the verdict that he did not promise. this is no cause
of action.

The question what defect is ^{after verdict}
plead's will require a motion in court of jury ^{after verdict}
the general rule is this.

After a general verdict jury may be directed on any
matter which would render the jury unnecessary of the verdict
unanimous. 2 Bth 77. The question then
arises, what defects will stand what will not stand ^{at} after
after verdict unanimous?

The general rule is. That if the parties plead of the con-
of matter a defense & there only is defect the defect
will be cured by a general verdict in his favor.

Now that I need not say on the case in the attorney
will intend of union. "The Plff came of action & the deft defense
being that of the Plff came of action. and what applies
has already apply to the Deft in his defense. I dislike
paraphrase when I can repeat and it.

If then the Antennae of the Pfl. cause of action is only defective in the Notens, the defect is made up by a general disorder in the Pfl. system. 3 Blk 344 Long 658. Cont Ed 371. Lill 365. Lill 1023. 232. But also 320.-1. Cont 825. Cont Dig Pl 687. The case of Rushton & Aspinwall gives the best authority, L. Douglas.

Of no being of action is only a definition as is stated
a virtue and not and the dec. then as under the "the price
rule relate to a defect in the State and the latter, to a defect
in the State, but the cause of action,

the Dec. is fixed as well as it can be, yet it cannot be added by order for the work will not continue.

And then again, the M^{rs} declares upon a point grant of an increase
of a grant of an interest a year. This, debt cannot be paid
by credit for the loan in two years.

suber is proposed. The (Oll) only to state his own opinion
and obtain a verdict. This does not and the defect. for the
proposer is the gain of the entire. The defect is in the
of entire time.

There is apt to be ³ some difficulty in getting any candidness. Some
R. M. J. can have no right to be drawn aside, he might
of other as held in a position.

When in these the ¹st of the intellect is called in, the
 dept is not called by itself, for Queen is the guide
 of the action, for we have a good ear of action, yet still
 if we are constituted the ear of action is wanted. it is called by itself,

[illegible]

It is an immense sum that my debt to the party
 who will support a nation in arms of 100,000 men
 be not so much time been fatal on your account
 3 Bk 398, 394-5.

But the rule does not hold elsewhere. That
 section would support a general account will not
 at a man as a result of proof.

Then if the account is not sufficient for another thing
 what it is to do, the result of it is not within this
 connection is implied from the fact that an act
 I find the answer is not by general account the it would
 be not fatal on your account. As: If in your the P
 must to show the value of the goods which was said by
 Co. Louisiana Ltd. It is good after credit that, it would be
 fatal on your account. The after credit the debt is
 added.

3 Bk 394, 407, 409, 410, 411

When Gen. The debt is not in account would not stand except
 but after credit it is required that the party in this account
 has found damages which they could not have had had they
 not been proof of damages to them. This is implied after
 credit, the credit of the party explains within what the account
 is.

If one pleads a claim without alleging it to be by deed, how
 this defect is bad on your account, yet after credit it
 is good, for a deed is then presumed to have been. The
 party has found a claim which must be by deed. I think
 it is presumed they find a deed. ^{likely} *Attorney* 2 Bk 376, 10 Bk 376

There are some defects in the dec which no verdict can be,

It is a general rule; after a general verdict.

12 Eng 658 100 Ea 671 Carth 339, 12 Mo 145.
12 Wend 228. n. 2d 174. 6. Loepp 827. 1 Mo 172.

1st The Ch must presume in support of a general verdict every fact a circumstance which is part of fact (obscure) is one of the will and the finding.

2^d In support of a general verdict the Ch must presume every thing which it was necessary to know for the purpose of proving the fact as it is found. not to presume this would be in effect to unsound the verdict, then unless as the law is plain.

In an case of Green, the Ch overruled the statement of time in the dec. in which the fact took place, but after verdict. The Ch presumed some particular day when the jury had found as implied from the verdict.

The finding of a jury converts the finding of time in future into mere surplage, as if a husband is said to have been committed on the 12 Aug 1825. which is after the finding of the jury, & the jury find the fact in support of the Ch. overruled the finding of the time in the same surplage. Carth 746. 518. 1d 545 2d Ray 310. 3 Mo 394.

394. The finding of the origin of day. Then reference to Ben Lee case. At this day an origin in favor of time is matter of fact and is only on the dec. by Stats. and 3d paper 3 Mo 354. 12 Wend 118. 169. 286.

If one pleads a factious matter living of person and the record for the purpose, the origin is aided by the finding of the jury. 12 Mo 145. 5 Ben 37. 10 Mo 354.

The course I take to be altogether foreign to the point, although Mr. Justice Buller in his own is very incorrect.

I am as at the end of a piece of the P.M. alleges is
 due from every material fact except. Justice, here a gen.
 verdict cannot say the defect, what does the jury
 with, can find they find. the meaning of the Piece
 is evident. He, yet they find not "sustain" This cannot
 be said & cannot be removed from verdict. The business
 of the Jury is to find the facts alleged as they are. 7 Col. 10. 11.
 1st 16. 640; 8th 127-8. 7th 125. 4th 472. 2d Gen. 13th. 5th 44.

The fact omitted in the sample above cannot be pre-
 sented from the facts alleged and found, does not require
 under the proof of the fact omitted and when this
 is the case the defect can never be cured by general verdict.
 Com. Dig. Pl. C. 85

In our note with the Diff. for damages done by Lis
 dog. The P.M. omits to state manner of the Diff. of Lis dog,
 mischievous dog, in disposition, but the fact of mis-
 omitted cannot be presented to him then found & the
 jury, and is thus void. 1st 662. 3rd 12. Doug. 558.

This point of pleading has been greatly abused in pleading.
 the defect is clearly stated and fully intended in perfectly
 plain.

The Ct cannot presume any fact omitted in the Plea
 and in support of the verdict, merely because the fact
 is missing in part of the statement, to make out a case
 of action & defense, such a presumption can not be
 sustained except upon the supposition that the Jury
 are without power of truth of law, which supposition
 would be preposterous, & yet in my opinion the Ct has
 ever done in this preposterous way. The case I believe
 is in 1st 1st. It is said that a general verdict cured a
 defect in not stating a circumstance in fact.

Art 403. As to admit this rule in an Art. 403 would put
an exception to the motion in a case of Judge
and cannot be collected, 74/2. 351. 1 Vent 27. -

The case can prove matters of fact except what
are matters of law. The Judge is finding the facts
truly what they have found,

A motion in arrest of Judgment after a defense
opposed exactly like a plea de non est; is and
what would have been found on your verdict. The defense
is not, then has been no trial, & it would be improper
to remove from the jury. After this has been no proof.

2 Bur 900. 2 Str 1276. 1 Mills 176. The rule is the same after
a Special Verdict. The motion is arrest of Judgment.

After a Special Verdict motion can be presented
showing facts against a finding of all facts. Motion has
been presented to the jury.

At the rules laid down before the judges to be decided

There are cases in which motion in arrest of Judgment
may be allowed for the greatest defects

This is the case when the ^{4th} defect a fault admitted,
is on the side of that party who moves it. As
of Judge for Judge is given before the whole court.

Thus if the verdict is in favor of him who when the
whole court is entitled to it. He cannot have it. Then
Justice and his power may be the better preserved
when the issue is taken

Suppose the case to be wholly misapprehended, & the plea is
Bona fide, & the issue is taken when the plea
Bona fide for the Defendant & the Plaintiff cannot arrest

the Judge. Because the defect appears to be fixed in the
 Offt. he states no cause of ac. & a Plea in Bar worthless
 is good enough for a Bad dec. and here the defect is
 Law page 56-177. Ld Ray 131. 2 ib 1080. 8 Co 120. 133.

And this rule will apply "mutandis mutatis".
 Thus all the principles apply in Pleading.
 Suppose the Plea in Bar is Bad, against the dec. to be good.
 & the replicator Bad. Then the Deft. moves in arrest of Judt
 on account of the mispleading of the replicator, But he will
 not be allowed it, for he has pleaded no plea setting the fault
 was fixed in him.
 Stat 56. 9 Co 110. 8 Lev. 244.

My rule remains; the right to be arrested goes no further
 than to the arrest of Judt. But the Ct may go further
 than barely to arrest the Jurgt's verdict
 when judgment is necessary the (mistake) is allowed, Jurgt
 is Chief mag sometimes he (arrests) rendered in favor
 of him to whom the verdict is found.

In some cases I think, say there may be something
 more than a mere arrest of Judt.

If the Party to whom the issue is found appears
 upon the whole record entitled to judgment, Jurgt must
 be ruled in his favor on the verdict notwithstanding,
 & this is called "verdictum non obstante" 1 Br 251-5.
 6 Bl Pleading, Cas 517. 1 Ch. R. 634.

Suppose the dec. wholly mispleaded. The Plea in Bar
 happens & mispleading makes no difference, but on the issue
 to the Plea in Bar, & a verdict for the Offt. but the Deft
 may move that since judgment is arrested and therefore
 judgment be entered for himself, and the Ct will do so.
 in this case. It could be to no purpose here to say the al-
 though the Judge & go no further, It could do no good to
 award a verdict, as that is the nature of the case is
 cannot be obtained then to enter judgment for the Deft.

in the dec. but but is in fact what is our material. The
 then could have been a material for the first, and in this
 On the Dec. after the first, and answer to the replacer
 to be tried by a new jury "de novo de novo."

When the time comes a material ground of claim
 a defense is claimed and taken in fact what is
 immaterial. Just will be allowed to a replacer avoid
 just de novo de novo. On Jan 5, Lovers 176 480
 127, at Bac after M. M. 2.

On a Cont. to pay money and before a jury does
 the debt stand paid. After the day & the Pff. then
 the debt is paid. I ^{read} is paid for the Pff.
 When the debt was added the first & the Ct. will not
 a replacer. The debt is not good. but the Pff.
 replacer a time was bad. because he claims being
 the first. Before the day. 2 Jan 94. Jan 94.

This house is one of those material cases in which
 the would find an way does not claim the first claim
 if find the other way would claim the issue.

Another Exam. Suppose to an act of any kind. The debt
 stand a release since the date of the writ. & the Pff.
 replacer that "it is not the Pff. act since the date of
 the writ." This is a bad replacer. for he should have
 said that "it is not a release in "main & form &c." So
 to reply that the debt had received no release since the
 date of the writ. in the word of the Pff. leaves it open
 to the implication that there might be a release before
 the date of the writ of all causes of action &c.

in the Writings on both sides are laid & can there be a better
 for taken - Mr. J. Gould.

But a replead for the immateriality of the issue is never
 awarded in favor of the Party who tendered the issue. It
 is always awarded in favor of the Party to whom the
 replead was tendered, this you will observe
 from the main examples, Long 380, 1 Lams 308, 1 New Bk.
644, Cowp. 501, 2 Lams 319, 2 Id. 824.

An issue may be immaterial when found one
 way, when if it had been found the other way
 it would have been material.

To draw on Controversy. pay all in a before a certain
 day. If the debt paid before the day, pay not &
 if it is found for the Def has a replead may be a
 awarded. In the rights of the parties by the verdict one will
 decided for the Def might have paid it on the day. But had
 the verdict been for the Def then could be no replead awarded
 for if he paid before the day it is discharged, 2 New 144, 2 M. 173. Cum Rob 418.

A replead is never awarded after a demurrer
 it is only awarded after an issue in fact. You will
 observe of demurrer say that there the parties have
 already met themselves upon the Q. This is not
 a very decisive case. But there is a good reason why
 in that, an issue in law looking back thus the whole
 record cannot be immaterial it is a legal im-
 possibility, 5 C. 52, 1 M. 42, Latch 148, 6 Mod 102, 2 Lams 319.
2 Lev. 12, 1 Ch. 634.

If a replead is awarded when it ought to be denied
 a demurrer when it ought to be awarded the plea
 just is erroneous & the objection may be received. If it
 is denied to him to whom it ought to be awarded, it deprives him
 an opportunity to a right which he was entitled to
 the replead &c

Falk 579, Cited 2, 1 Day 27, 152.

When can be no Repleader after a default
in a discontinuance, Falk 579, Cited 3, Comb. 323,
1 Ch P. 633.

Under a former rule that there can be no repleader
after a default, 3 Lev 20, 440. Continuing to that rule,
it is the P's that a repleader may be awarded after a
default, it is evidently inconsistent as laid down in Lev,
to let the then, the rule is that after a default the P's
cannot wish to be repleaded of course, & the D's has no
pleads at all & if he has he has abandoned his
cause, but then has been no trial and no issue
taken, In the case of discontinuance the P's dis-
continuing of the case is at end as to him,
he has abandoned his claim a defense &c.

At Common Law Repleaders were sometimes
awarded before the trial of the issue in Mod's practice
this is seldom if ever done because under the
statute of Repairs the award may sometimes
come the issue & the Ct will not anticipate
the issue, it would be premature to award a
repleader before the issue is tried, still however as
the Ct can entertain no doubt but that the
issue will be decided they may award the Re-
pleader & it is seldom done if ever without practice

2 Lev 32, Cited 2, Comb 371 Ch P. 110

On a writ of Error a Repleader is never awarded,
for it is the object of a writ of Error to overturn judgment
and the Ct does not ordinarily ^{preclude to enter the} Repleading on a writ of
error, & on writs of Error the general rule is given, ^{see} Falk 349,
2 Lev 12, & cited 102.

Notwithstanding this rule it was once allowed in this State for the party
to replead, allowed on a writ of error,

Jury are sometimes arrested for a defect in the verdict.

If the jury find any part of the issue (the) nullifying any part that is material ^{material} (part) is bad, and judgment must be arrested and a venire de novo awarded. See 8, La Ray 1521, Tra 844, 1089, Esp Dig 421. In this case the is an "explender" awarded, for the fault is not in the issue. The only fault is in the verdict.

If in a case, verdict, if the jury find any evidence of a fact in issue instead of the fact itself, judgment must be arrested and a venire de novo awarded.

Thus in an action of Treason. The jury find that the property was that of the King. That it was found in possession of the defendant & a demand made by the King. This verdict would not be good for the King, for the King found the evidence which is the gist of the action, for a demand and (recovery) is not here evidence of a conspiracy.

1 Burr 111 2 Burr 1243¹²⁴³ Esp Dig 590, 10856-7

But if the verdict find the whole substance of the issue with any all that is material in it it will stand tho it may vary a little in point of form. 12 Mod 5, Co Lit 227.

If the verdict says from the issue in substance it is bad & judgment must be arrested and a venire de novo awarded.

If in an action on a Contract the Defendant pleads a release and the jury in finding their verdict, find that the Defendant is Defendant, acknowledging the fact of a release, here the verdict is bad it varies from the issue in substance, and a venire de novo would be awarded. However important may be the fact found yet if it is not material to the issue taken, verdict must be bad Judgment arrested & a venire de novo awarded. 2 Ver 151, 2 Rolle 707, 719.

But a belief that find the issue substantially is not
 intended by finding any thing more than is that
 in issue. This is perhaps - "until her mind is
 intention." If the question is whether the debt has been
 paid find that he has. After, in T. find in
 the case of Clark, this latter finding has no effect as
 is more apparent. *See 207. 6 Co 57. 2 Phil 74.*

If the Jury after greater damages than the
 Plaintiff demand the verdict will be de facto unless the
 Plaintiff enters a remittitur quod est except. & by entry
 and remittitur he may prevent an award of judgment.
10 Co 115. 2 Phil. 113. 123. 1 New Rep 643. Exch Reg 304.

If the Jury after finding a fact, specially
 make a conclusion of their own from that fact
 the conclusion has no effect & the Ct. is not bound
 by it. But must give judgment where the facts found
 authorize the Court to do so - as the conclusion which
 the Jury has made. *10 Co 10. Holt. 53. 56.*

I have laid down a rule under the head De. which I will repeat,
 in a Civil Case if the de. find or more counts
 in the De. of which one is good and one is ill & the Jury
 find and enter a verdict and after damages enter the
 Judge will be awarded, for here the Ct. can make no
 enquiry out of the record relative to the facts, for judgment
 must be given according to the facts on the record. *10 Co 130.*
Phil. N. P. 8. 2 Phil. 377. 1 Phil. 308. 332.

But in this case the de. would be good on damages
 because there is one good count & it is an old case
 that is an old case of 10 Co. The point is in the De.

If there be several damages awarded on each count
 separately then the Plaintiff would have judgment for the good count
 in case. & 2d Reg 13 and an award of judgment as to the other counts.

If in an action as two or more after the Jury find over-
 and against both and move the damages where they
 come. The Jury may a very rare, at his election
 arrest judgment he may if he chooses, enter a recoupment
 as to one and then judge de accipiendis damnis, for the
 other apud as the individual debt or against both. But D. & R.
 420, 537, 11 Co 67, Cuth 19, 5 Bm 2790, under Appeal & Butts.
 The question when damages may be recovered where two or more
 debts are joined, is fully illustrated,

With regard to two Counts on good the other ill, and enter
 damages in affid. If it appears from the notes of the Jury
 their Judge, that no evidence whatever was admitted by the
Jury in support of the bad count, the Ct will order the
 verdict on the bad count to be amended, See 5 B. & M. 134,
 Doug 362. And in all these cases when judg is asked
 been or in damages at quodlibet there is an ill
 count. There is of course a demurrer now allowed
 and ^{there} is no trial. Yet no plea can be entered,
 8 M. & B. 564, Doug 362.

The Jury were never held in all cases when the Jury
 is arrested for a fault in the pleadings. There is no
 exception would become. The fault is not in the issue
 but in the pleading.

But in Civil proceedings one Count is good
 & the other ill. Jury cannot be amended. It is
 only in Civil actions that rule applies. The Jury
 preside and preside. This is the province of the
Ct to decide & remove Jury, which they may do on
 one count or more. 2 Bm 985, Talk 384, 2 Hawk 627, Doug 703.
 Le Roy 886 - Now if in this case the Jury could remove a
Jury, it might be altered as in civil cases.

They are to be allowed only for intrinsic causes.

In this state just has been asserted for many, extrinsic causes is to say for causes not appearing in the pleadings or evidence & not appearing directly in the face of the record. This is allowed on motion to the court for arrest or judgment entered into under the motion or arrest, &c. There are various causes of these extrinsic matters as fraud, corruption, &c. *Hart* 13. 133. 166. 184. There are many of the arising extrinsic causes which I shall not repeat at present. but under the head of New Trial.

Now this may refer to a plea not cognizable of an issue. but in law, there is a method adopted wherein extrinsic causes are frequently the ground of motion, as causes of defect, then the extrinsic cause is shown on motion or arrest before the judge and by him made a part of the record and then comes up to the Court in Bank, who takes notice of it then as intrinsic causes. But the rule is to present the extrinsic causes under the motion before the Judges themselves, who sit upon the record, & decide the point, 5 Bm 288. 291-2, Tra 642, *Shaw* 31. The same thing has been similarly proceeding as in the state in several cases, i.e. on motions to the Judges sitting in Bank have themselves engaged with the extrinsic causes themselves. Known the next most method there is to move for a New Trial for these extrinsic causes.

1 Bm 250. 1 Freeman 49

But to return to arrest of judgment.

On account of judgment for defects in the pleadings no costs are allowed on either side, because the party moving might have taken advantage of the defect by amendment. This is not allowed, the party moving in arrest, might always omit to put the other party to expense, *Salk* 579. 2 Ventris 186. 17 K. 267, *Corb* 487, Tra 617, 1 Ch. R. 633. 638-9.

Our rule is the same. 1 Root-69, 70, 572.

The rule is the same when a motion for defect of pleading is moved, and a writ of *Quia Timet*,
 When the pleader is defective in the point of time stating
 interest. The opposite party is not bound to demand or move
 in case of judgment. But he may bring a writ of *Quia Timet* in
 such case he is not entitled to costs, for he must have
 demand, and costs. 10th P. 638-9.

This rule however does not apply to a motion in case of
 judgment in extreme cases, because here the point is
 not in the want of demanding, for the claim of (claim)
 the motion does not appear till the pleading is moved 1 Root 14, 572

In such case in our practice the whole case follows
 the final event in case, there is the case then the being
 at the end of the proceedings.

With regard to time. The rule in Eng^d is the
 motion must be made in the first four days in
 the next term after the trial 3 Bk 395

With us the motion is to be made within 48 hrs,
 after the trial. 1 Root. 3 Day 28.

End of Readings

Writs & Error,

And 1st of Bills & Exceptions,

The notes directing the notes of law it is necessary to understand
then the spirit of the Bill of Exceptions.

A Bill of Exceptions is a statement of facts occurring
at the time and of some interlocutory judgment or decision
of a direction to the jury founded upon those facts
which statement is annexed to the record for the purpose
of laying a foundation for a writ of error.

As the facts stated in the Bill are never
as do not originally appear upon the record. If
of they were upon the record there could be no need of filing
the Bill. ^{until} Still they are best upon the record
then can be no foundation for a writ of error. They
are originally extrinsic facts, such as, the drawing
of a witness. The direction to a jury. &c. and a great
variety of such errors.

This statement contains ^{not only} a statement of
these extrinsic facts, ^{but} also of the proper decision, or
direction given by the judge upon those facts.
& this is called a B. & E. because it contains ex-
ceptions to the decision, judgment, or direction, of the judge
3 Blk 9 Co 13. b. 10 Ben 325.

This mode of founding error, was unknown to the
Com. Law. They were introduced into England by the Statute of the 1st of
the Com. Law a writ of error lay only for errors originating after
entry upon the issue of the record in civil & Real & P. 315.

We have here no such State, But the Stat of North
is previous than land in an State as long as an
and Stat that 168.

As the only office of a Bill is to find a writ of Error
the Bill cannot be filed except in a Ct. from which
a writ of Error will lie. A Bill of Exception then cannot
be filed except in Ct. of record, and for that reason
never the right of motion Ct. but Ct. of error are
reviewed by writs of Error. It must be a Ct. of record. 1 Bro 997

In the other hand such Bills may be filed in all
Courts where judgments are liable to be reversed in writs of
error in Ct. of record. Thus in Eng. in C.P. Courts, Exchequer
and King's Bench. It was formerly doubted whether
a Bill could be filed in the Chancery Bench, as being common
law. But it is now well settled, Bull P. 316. 2 Ld 237
1 Bro 326. 2 Show 147. 287.

When a Bill may be filed in an Supr Ct, County
Ct., & Justice Courts, because a Stat has made all an
Ct. then of record.

When a demand for error is required by the Ct. the
party offering the demand must file a Bill of Exceptions. In
this kind of error. 4 Co 13. h. Co Ec 249. & 341. 2 (H. Blk 288.)

It was a Bill of Exception may be filed for
a mistake in charge given by the Judge to the jury. It
is the request of law that the Judge charge the jury correctly
that they may judge of the facts, a motion for a new trial is
now the more usual way. But the party may if he chooses
file a Bill of Exceptions, & move (in absence of Jury)
for a new trial. 1 Bro & Pol 564-5. 2 H. Blk 288.
2 Nis R. 1.

If error offered is admitted a request for admission
is sufficient (the party may file a Bill for that error
Bull P. 316 1 Bro 326.

The admissibility of a witness is a question of mixed law, and is (and) certainly. It may even be a matter for a new trial is a concurrent, remedy with a Bill of Ex. and is the most common way.

But if evidence is offered & admitted by the Judge a Bill cannot be allowed because he did not admit the Judge's opinion upon that evidence. This is a mere oversight of what the court have done. I fear must overstep no Bill can ever be filed, B.S. If a second is offered in London, which is conclusive evidence, now if the Judge should omit to state to the jury that this second was conclusive evidence. It is no ground for a Bill of Ex. But if he should tell the jury that it was not conclusive, this would be given, Ray 405, But 316, for a Bill of Ex.

If a Bill is by the Ct. refused, to the party who is entitled to it by law, he may for this cause file a Bill of Ex. & he may enter his prayer on the record & ^{have} (there) a decree of that prayer entered on the record,

Ray 486 Dyer 231, 113ae 325. This last instance of entering the prayer on the record. I think of under the head of accounting.

But for any decree relating to mere matters of practice a Bill cannot be filed, for in general points of practice are dispositive and there is no prejudice of them. It is a matter for the continuation of a case & the Judge should upon a dispute, however ^{the} correct he is still file. For this is dispositive with the Ct. as if the Judge should refuse to order security for costs. here even is no prejudice & that of which is error is not prejudicial is no ground for a Bill of Ex. & continuation.

And when a decision of any kind by the Judge is dispositive, a Bill cannot be allowed. Hence if a Ct. refuses to grant a new trial or a new point seems that grant & refusal is dispositive—

Lo of in Quantity a New Bill Terms are inserted a reference
it is (no word of course no) and for a Bill of Exemption.
from this association, with the Bill of P. 316, 1886, 327, 1887, 329.

Bills of Exemption are not allowed in proceedings
for Treason or Felony, for which there is a very strong
reasoner's view is, that no man can the Bill of Exemption
is considered as counsel for the prisoner and would see
that no injustice is done him. And the ground
of a Bill of Exemption is always for some mistake of the Judge
and is not the proper basis to be mistaken in this as well as
other cases. 1886, 325, 1887, 328, 1888, 324, 1889, 486, 1890, 485

The very obvious reason of this rule is, that pro-
ponents of that kind are not within the State Method, &
B of L are the creators of that Act. I feel I can offer
a good reason why the State of New York do not include
crime prevention. The reason is, that the almost univer-
sal object of a Bill of Exemption is to obtain a new trial
upon a conviction cannot be tried twice for the same crime
of course no new trial can be awarded, therefore follows
that no Bill of Exemption could be granted in such a case.

But whether B of Exemption may be allowed for indictments
for misdemeanors short of felony, is a matter of dispute.

2 Hawk 458, 1 Best 366, 1886, 326, 1887, 325, 1888, 486.

Thus much has been previously determined
that in an indictment for a man known for some
crime of Vice. There may be a Bill of Exemption allowed
Lend 5, 1886, 325. But I cannot in such a case that
a Bill could not be allowed in favour of the prisoner.

This reason is obvious because as I have before shown
he cannot as a general rule be tried twice.

Therefore I am inclined to be correct, That a prosecutor for suicide, means that as a general matter there can be no Bill allowed in favor of the Prosecutor, because as a general rule a person acquitted of a crime cannot be again tried for the same offence.

On the other hand there are many cases in which a person convicted of a crime is deemed to have a new crime I suppose that in all such cases there should be no objection to a Bill of Exceptions. This I think would preserve the criterion of distinguishability. Now for a deep conviction of a crime is entitled to a new trial. My idea is that is this, that it should be obligatory and totally inalienable to give a Bill of Exceptions when the first trial can be had.

On the other hand a person convicted of a crime is frequently entitled to a new trial.

In general a Bill of Exceptions cannot be made in a Bill of Exceptions.

When a Bill of Exceptions is made the cause of error becomes a part of the record. Still the party who is supposed to be the Bill, the record the party? or the record of what is disclosed in the Bill. Buller says that this has been in some cases been distinguished, but I can find no such case 2 Lev 237. 1 Wm 366. 1 Bos 327.

Again as the object of the Bill is to draw out a higher level than the judge of a lower level, it is not allowable to embrace the general merits of the case in the Bill of Exceptions. I think a Bill drawn up after judgment containing a general statement of the facts i.e. the merits of the case on both sides is inadvisable. Also, Buller says this is sometimes distinguished with. This has been attempted in this matter but without success. By the High Ct. 1 Wm 366. 1 Bos 327. 1 Wm 366. 8 YR 549. Buller v. Buller 316.

And if the Ct. below, whose records and Bill are the Ct. above would grant the Bill, as containing matter foreign to a Bill of Exceptions - 1 BWh R 555. Corp 161. Hurl 77, 339, 456

In Eng^d the practice is to authenticate the Bill by the Signatures of the Judges or one of them who appears in the Ct. above & acknowledges his seal, which he gives to it in the Ct. below. 1 B & P. 32. 1 Cor 161. 1 Bos 325-6.

When the Bill becomes a record of the record in the Ct. below it is authenticated by the judge appearing with the rest of the record. This practice of Ct. is far preferable to the Eng^d method, for the judge in the Ct. below may be sick, may be absent, and in a variety of situations, which would prevent his attendance in the Ct. above for the purpose of authenticating his seal.

In the Eng^d Practice, a Bill of Exceptions must be returned on the last term second to the sitting at the time an writ is granted. It must be filed within 24. hours after verdict. In the Eng^d rule vide Holt. 301. Fulk 288. Phil 316. The Court rule vide Root 569. 570.

A Bill of Exceptions never authenticates the judgment which it is founded on. But it gives the party filing it an opportunity of obtaining a rehearing, by a writ of error in the Ct. above. 12 Mod. 609. 1 Bos 322, 7.

A Bill therefore be filed and no writ of error brought the judgment of the Ct. below, may be executed the Bill notwithstanding. In the form of a Bill of Exceptions vide Ark. R. 59. The Bill of Exceptions is entered on the record and becomes intrinsic and the foundation for a writ of error. But in Eng^d the Bill is not considered as a part of the record.

the the page below appears and acknowledges the record,
 B. & P. 32. Then it becomes a part of the record and is exam-
 -ined with it. This is one method of founding a writ
 of error that they are less without a writ of Error, as well
 as writ.

Writs of Error.

The Eng^l writ of Error is a commission to the Judges of a
 Higher Court, to examine the record on which a final
 judgment has been rendered in the Court below, & to affirm
 or reverse it as the Law requires, and the writ may
 be for an error appearing originally on the record or
 for the errors assigned by the Plea. 3 Blk. 407, 2, Jan 187.

In Eng^d the writ does not summon the
 Def^t to appear as an original writ does, but it is
 not awarded to the Plaintiff but to the Court, or judges,
 and they give a return summoning the Defendant
 to appear in Court, on some day, &c. &c.

In this State a writ of Error is an origi-
 -nal writ awarded to the Plaintiff directing him to sum-
 -mon the Def^t in error to appear and show the trial
 of the error.

When a writ is found on a remittitur, in
 the legal opinion of the Court below, it is thought for
 the reversal of such judgment only as are founded on
 error point of Law, & an order returning on the record
 i.e. on instructions. 2. See also the Act Jan 189 a new Act, 3
 Blk. 417, Co. C. 233, Code 746.

By a writ of Error, without more is meant an Error
upon a record appearing upon the face of the record.

But there are writs of Error made in what are called
errors in fact. In these not appearing upon the face of
the record — *See Mr. B. & C. v. B. & C., 3 B. & C. 407.*

If the writ is error can be reversed record a ^{reversal} ~~reversal~~
to say this with the nature of all reverses, a prerogative
of any kind. The writ of error is considered as an action,
so that a reversal of all actions would be a law to itself.

But where a writ is that on reversal the writ can
mean nothing more than a mere reversal of judgment
a remedy of error below, it is not considered as an action
Co. Lit. 288. b. 1 Roll 788. *See Mr. Edw. R. 5. & Co. 152.*

There is another species of a writ of Error found in
some writs of fact. It differs from the writ, i.e., some actions
just on the record of the Court below. In this case the
writ must be that the Court is capable of trying a
question of fact and no other. It being found
on some extrinsic fact. That fact must be tried
by jury, an Error of fact cannot be tried before the
Court ^{chancellor} but it may be before the K. B. 1 Ven 207. *Case*
122. 174. *See Mr. B. & C. v. B. & C., 3 B. & C. 407.*

In such a case however, it may be that writ
to the Court in which the judgment was rendered, or to a higher
Court capable of trying a question of fact. Thus if a
judgment is rendered in the Court of C. P. it may be that writ, with
Court of Common Pleas or Exchequer, but not in the Exchequer Chamber.
It is usual in such cases to bring the writ in the same
Court that rendered the original judgment and is called a writ
"colam nobis"

This is now called "colam nobis" which is certainly
a misnomer.

supposed a given Court is dead alone and just, and when
here a lot of error has, a fact is in fact, what must be
true by a just. Earth. 122, 179, in fact, & Talk 400. 1 Ben 20, Ben
etc. Ben. B.

Suppose a just, actually dead, again, & for, a Party who
is dead. This is an error in fact. Reg 58. Earth. 338, 9. Ben
the error. H 2. The thought dead is dead on matter
of fact.

In such a case where (of the Party) of
the party, where the just, is dead is alive, & the Party returns
that he is alive, he may appear dead. But in this case
I am now in favor of the party supposed to be dead.

If the judge who gave the verdict was interested in
it, this is an error in fact, and must be set in a high
Court, which of trying the issue. Stu 639.

If one error & errors of (the) Ex^r of Jst who
is supposed to be dead but is alive, this will of course will
be for a reversal of judgment. There is not dead alone or
a positive principle. But 2, 3, 4, 129, 1 Roll 744, this is clear law.

It will of course will not be in a Ct. nor
of record. If then a County Ct. of Eng^l (which?) should call
an erroneous just, a writ of error will not lie, for it is
not a Ct. of record. In Eng^l, a Ct. & Equity is not a Ct.
of record, in such case there is an appeal to the House
of Lords. This method of appeal is now extinct generally
throughout the U.S. It is adopted in the State of New York.

1 Roll 744, Phil. N. P. 235, Bacon's

error, A.

It will of course will not be in a just of New York, in
which case no just is had, there is no the outcome
course, is to move for a new trial, before Ct. in Bank

That a writ of error will lie in such cases. 1 Roll 444. 1 Wms 432.

By a Stat Law of this State, a writ of Error may
reunite the degrees of our Cts of Chancery. This is a private
Stat Law, Stat. Comm. 4th. Error.

But in this State error lies in one C^y Court
& Justice Courts. See last case the writ lies to the Sup Court
from the Sup Court to the C^y Courts.

Errors in Law & Fact cannot be joined
together in the same writ, if they are it is a bad writ.
If this was allowed there would be here two writs, one of
Law the other of fact, This is in the nature of Duplication
A demand of an issue in Law is then there is no error in the
view of the writ. A demand of an issue in fact is better than there is
no such fact.

1 Wms 58. 1 Sed. 21. Bac. 4th. Error 1. 2.

1 Vent 252, 1 Roll. 461, 1 Wms 58. 231.

But the error in fact & Law are blended in
the Sup. Court, in ~~the~~ *error in law & fact* "in error & do." He can
take no advantage of the double aspect, for this plea mixes
only a question of Law. his only way is then to demand
to it. 1 Wms 58. 1 Sed. 21. Bac. 4th. Error 1. 2. 1 Wms 58. 231.
1 Wms 58. 231.

But a general demand will reach this point of
double aspect. For this mistake is called duplicity and
a pleading duplicity causes the same advantage of by gen.
demand. The reason is, that words of Error are not with
it. 1 Wms 27. 1 Sed. 21. 1 Bac. 4th. Error 1. 2. 1 Wms 58. 231.
1 Wms 58. 231.

As the aspect of more than one error in fact
in one writ of error is admitted and the aspect is admitted
Thus if the P^l should ^{then} *ask* a writ. That the writ was a Sup^{er}
& a fine Court. There is a distinction. Statute 1 Wms 20.

But the least of any number of errors in Law is not den-
-finiteness. For these do not require distinctness if in a dis-
-cussion much less distinctness follows. Even Dig. M. 3. B. 15.

If an error in fact is well ascertained it should be
traverted, for "In nullo est error" confesses it and
"In nullo est error" confesses it and. If the party appears as
error, truth of fact which is not error. The Bill may refer
to "in nullo est error" May 23⁵⁹, 25²³, July 2, Dec.

If an error in fact is ill ascertained the Plea, "in
nullo est error" does not confess. Thus if a fact is
asserted which contradicts the error, it is ill ascertained. For it
contradicts the error. Civ. Jan 12, 29, 529, May 23¹, 1 Roll 758.

Outlets made singular divisions at one period. For when
they were made had been not proceeded. In Jan 27-30 & 1 Roll 2

It was determined in our Superior Ct. that a double
opinion of error in fact, even on the same document was not
ill, for in another case, that the Ct. might strike out the opinion
a cross and thus render definite, single.

If the apt. of an error in fact contradicts the error
it is always ill. If it is apt that the
Ct did not see in the case when judgment was rendered
that the error is ill. If it is apt that the judge by
whom the error was made the judge's whole conduct. This before
it is rendered. But the error H. B. 1 Roll 757, Civ. Jan
368, Civ. Jan. 12, Civ. B. 469, 1 Talk 262. In none of these
cases does "In nullo est error" confess the fact.

It is a general rule that the Defendant in an action
cannot appear for error what he says he has pleaded
in abatement, in the original action, unless he actually
did plead it in abatement. Thus, If he has pleaded abatement, &
that is amended. He may take advantage of it by saying he has

All matters of whatness not heard in whatness are reversed
 Cost 124, 1 Hb. 766, 2 Hen Bk 267, 209.

When an error is put in a bill, the proper conclusion of it is not a reversal. It would be incongruous to conclude to the contrary, for there is no issue, until the Dep^y is in error. There is a case in 12 Geo. contrary to this but it is incorrect & utterly absurd & cannot be law. Cost 367, 1 Bac. 412, Bac. Ab. 16, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

When the error is in fact, a writ of error cannot be granted. But in fact when the error is in law a writ of error (quodammodo) can be granted. When the error exists in error in law, it would be totally improper to try the same question of law before the same court, which had once given its decision. 1 Sid 208. 1 Hen 4th 100. J. 6.

But this rule is not universal. For where there is an error in law committed by the Clerk or officer of Ct and not by the Judge, a writ of error cannot be granted. 1 Roll 746. 1 Sid 21. 1 Poph 181. Bac. Ab. Error. J. 6. If the Clerk or other officer should make a mistake in rendering up the judgment, the mistake would be good ground of error, and the writ of error could be granted.

It was formerly a supposed rule, that a writ of error the judgment entered by the Judge could not be set aside or reversed until final judgment rendered. When the party moves for a writ of error, the judgment entered by the Judge is set aside. It is now ruled, that the writ of error may be set aside before final judgment rendered in the Ct below. 1 Hen 255. 3 Hen 308. 13 Hen 4th 13. 1 Lat 133.

1 Hen 255

1 Hen 255

1 Hen 255

In Com. the old rule prevails. There is but no nisi prius
 ad audendum in ecclesiis. Then the nisi prius must be
 stated in the appt. I am Ct. I am decided that the appt
 out of the parties comes after this rule. 1 Root 181. 290.

It is a general rule that when a just is joined as
 several individuals, all must join in a writ of error
 to reverse the judgment. If one of the two depts. should
 join to prosecute the writ of error then must be a sum
 minus & seven ann. Cor. 12. 8. 1 Roll 747 Star (the error 13, 3
 cited 134. The principle is that an entire just must
 be reversed in toto, or not at all.

In Sup. Ct. I have many years ago rejected the
 rule, & reversed the just's ground, & the other, and asked
 of the others, 186 114. This is certainly a very strong decision.

For if the writ was not just the claim might have been
 very different. The just must have given notice that they
 the damages,

That if the parts of the judgment are divisible
 up there are more or less of the other part, in so far as can
 be, may be reversed as to part & affirmed as to the residue.
 The just is bound for damages & costs when, by law
 costs are not demanded, but the just admits of division
 in his parts. In the case of error, the just's ground the costs,
 and not the just's ^{damages}. This rule applies to the just, itself
 and not within to do with the parties, 159, 218 808, 4 Nov
 2022, 1 Root 138.

No person can maintain a writ of error except the party
a party to the original judgment, all others are strangers. But it
may be maintained by the representatives of the party or the
Ex: a count of the personalty.

And the writ must be one in relation to the subject
matter of the suit. The law at law cannot maintain
a writ of error if the subject matter be personally. to wit: return
to the Ex: and of the subject matter be realty. And the same
rule holds as to Defts in a writ of error with respect
to parties & parties. 2 Blk 355, 1 Roll. 747, 748, Bro Abt. Error at 2
2 Ld 56.

It is also a general rule that no person who is a party
can maintain a writ of error unless the original judgment
was to his disadvantage. If the Pff has judgment he cannot
bring a writ of error, neither can the Deft if he has judgment,
but a writ of error for he already has judgment. Bro Abt. Error at 2
Hob 70. 5 Co 39, 8 Co 59.

If then one of several Defts obtains judgment when
the other Defts are prejudged, the person cannot join in
a writ of error to reverse judgment it can be brought by the
others. The 899, 1 Lev 210, Hob. 70.

But to the last general principle mentioned, that
there are cases in which (though) the prevailing party in
the Ex below may maintain a writ of error.

Thus when the error is the fault of the Court, and after
the manner of judgment the party who obtained judgment
below may maintain a writ of error. This is allowed not
with a writ of error of judgment to the party below, but
on the ground of general expediency.

Thus if the party who obtained judgment below ought to have been
adjudged, with party may bring a writ of error.

3 Co 39. 8th 59. 4th 107. 13th 107. 18th 107. 18th 107.

So also if an execution of two debts put is needed more of them only, for the whole amount & cost. The other may be a writ of error. 4th 107. 4th 107.

And a Writ will be given below once again for error the first date of that Ct the 1st term was the other before that Ct. 2 Cases 125.

—Supervisors—

Upon the question how far the writ of error operates as a supersedeas. The rule was formerly to have been that the mere showing of the writ to both opposite parties operates as a supersedeas being shown 4 days before. 2 Ke. 18th 25. 1 Ke. 492. But it seems now that a writ of error is no supersedeas till the writ is actually allowed. 1 Ke. 280. 1 B. 2478. By a supersedeas is here meant a suspension of the right of the judge of the facts who presided in the Ct below to take out a judgment, &c. or if it is taken out to prevent any further proceedings. The allowance of the writ of error is only a supersedeas for 4 days. 4 days being allowed for the Writ to go out in Bond & return. If bail is put in. The supersedeas continues if not it ceases. 1 Ke. 280. n.

The Bail in error is entered as a security to the debt in error for the satisfaction of the original judgment in the event of being affirmed. for if this bail was not put in the Writ in error might put all his property out of his hands and put him in a state of the situation of the Debt in error.

In Reg. this are two matters in doubt the law of the Judge by 3 Stat Jan. 1. 13. 16. 17 Can. 2. This bail in error is preserved. See 10th Can. 1. 2.

In this State if a supersedeas of bail is taken out in the error. It is a supersedeas, not from the time of Judgment or 8th but from the time of the service of the writ of error upon the Debt in error.

But by the Ex. & Law Ex. & others who hold a'cern in judge's de-
 coming, testators, may have a considerable number of letters in
 Priv. for this are not within the Stat. as in 350 Bull. Ch. Ld. Ex. & others

We have no such Statute in this State. & there is no
 William Acton Ex. & others and only the person as respects this privilege.

If an Ex. is already out, before the writ is
 the writ must be given a supersedeas by delivering into
 the hands of the Officer who has the Ex. a copy of the writ
 of error.

But if one writ of error abates a is discontinued by
 the defect of the Off. is error a supersedeas, writ of error
 is no supersedeas, this writ is to prevent an indefi-
 nite delay of the right of the deft in error. And when
 a writ in error is not made he may own being another writ
 of error. 1 Tulk 263, 1 Keb 658. Ld Ray 97. Cont. 19, 393.

But if the first writ of error abates by the act of
 God a misfortune accident, a supersedeas may be granted
 on the issue of the second writ of error, for here the abatement
 is not through the default of the Party. Yels 208, 1 Keb 658, 686.

A writ of error is not amendable, as the pleadings
 in the original action are, — except for the purpose
 of conforming to the original record, & this was never altered
 till the Stat 5 Geo 1st. The reason of this rule is, that they are
 not within the Stat of amendments, & reason of the Stat, is,
 that all amendments, were intended by the Stat. to substantiate the
 pleadings & the Ind. & ^{and} ^{and} ^{and} to amend a record the parties
 Law Dig 2, C. 4, 5 also 16-69, Tulk 49, Ld Ray 520.

In Ex. the writ of error does not ^{state} the defect
 of the deft in error, but a civil process issues to procure
 the proper representation of the record. But if the Off. dies
 the writ of error in Ex. abates, this construction appears
 from the 4th & 5th Stat. & from the Stat that the writ
 of error party and abates the first 1 Geo 34 Tulk 264, Yels 208

Case 203. I conclude that in this State that a writ of
 error may be kept alive though with pretty dis. because
 our State of amendments are more liberal than the State of New York
 of which of error is not in all cases
 a matter of this kind demandable as of course.
 In Eng. the clerk of error, commences the foundation of the writ in
 error, and if he deems it timely and important he will not hesitate
 to file as there is no clerk of error, & I believe not in any of the States.
 But the judge who has signed writ & who is always a judge
 of the Ct. to which the writ is brought is bound to examine
 the record and if he can discern no probable cause
 of error will discharge the writ, and not allow it.

Case 204, 321, 4 Dec 1811

Error is not predicable in this State of the proceedings
 on a petition for a new trial. In Eng. this is not the
 case, no petition but a motion for new trial, but here
 in New York a motion will not answer but a petition
 is necessary.

Rule 41

Error is not assignable on a motion for the grant
 of a new trial in Eng. notwithstanding the rule. Yet if
 a new trial were granted in a case which gave it
 matter, no new trial could be granted, error is assignable.

The rule to which error is predicable & necessary, & some
 probable cause for granting a new trial, and when the error
 be no other trial for want of any cause whatever. Error is assignable
 if a new trial is granted under such circumstances.

The effect of a writ of error is to suspend the execution
 of the sentence in the original suit, & to stay all further proceedings,
 until the writ of error is determined, but notice this does
 not prevent debt on the original judgment from being
 given for the execution is suspended, yet the debt remains,
 (Ch. writ) 7. G. 2. 458. 3 Mils 345. Com. Pl. 177. 8. 80. 742. a. b.
 2 Lev. 153. May 100.

If debt is less as a ^{pragm} pending a writ of error on the
 pragm. The Ct. has a right in its discretion to stay the
 proceedings until prag is had in the writ of Error. 2 H. 18.

If a person obligates himself to pay what shall
 be received in a certain suit against A. B. & a decree is
 had against the basis. The writ of error for a reversal
 of the pragm. The pragm. thus bound cannot be subject
 until the writ of error is determined, and of course not
 till pragm is affirmed, 3 H. 18. 372.

When the original pragm has been completely ex-
 ceuted, as by taking the pragm. debt in the execution and com-
 mitting ^{him} to prison, a subsequent writ of error is ^{admitted to} no suspensions

So also if after property has been taken on the
 writ of error, a writ of error is filed, it does not annul
 the prior proceedings. I am coming now to the effect of
 the suspensions & now the reverse of the writ. 1 Hen 30.
 4 Ben 670. 684.

What if goods have been merely taken on Ex. But
 not sold at the time when the writ of error is brought the
 writ put in. The writ is suspended by Ex. But a suspension
 this I conceive not to be law. I take the true rule to
 be that after goods have been once seized on Ex. the writ
 will ^{then} be no suspensions for execution once commenced
 must be completed. For the Ex. of all process is regarded
 as an entire deliberate act. This has been decided in
 one than one solemn arguments. To the first point made,
 2 H. 491. Ben 670. 684. 4 Ben 370. to the latter point
 1 Hen 255. Talk. 147. 323. 2 Day 370.

But the question may be asked how does the Prag. in such cases operate
 by reversal. By the pragm of reversal. he will still get
 satisfaction

But if the Sheriff should claim that the Sheriff in this case is
 not entitled to receive the writ of *habere facias* nisi he will
 be liable. He is a plain vendor & the property of an executor who
 has paid for the goods & the property is in his hands & he is
 entitled to it. See 146. B. & C. 110. 111.

There is another Yafford case as to what our Books
 are entitled to. When property is taken in a debt & is delivered
 at an auction into the hands of the Sheriff himself and he
 sells the property, and a writ of error is brought, and judgment
 is reversed, can the Sheriff claim the goods from
 the purchaser. After a great deal of research I can find but
 one case on this point. I take the law to be in this case that
 the goods must be restored. The purchaser having the
 means of knowing the title of the Sheriff in the execution of
 the property, is bound to know, and he has no right to
 claim it. See 146. B. & C. 110. 111. But if he had no notice of the
 Sheriff's default, he would not be bound to give it for the
 law would not consider it an error. 8 Co. 143. b. Yel. 108. 179.

The remedy of the purchaser in this case, is an *ex parte*
 writ of error, or a writ of error of error.

Again when the Sheriff has taken goods upon
 a writ of error, and sells the property to a stranger, who has
 no right to sell, a subsequent reversal will divest the
 purchaser, of the property. The duty of the Sheriff is to keep
 notice of selling without authority, not warranted by law.
 5 Co. 90. Cas. B. 278. 3 B. & C. 778. 779. 780. 781.

When a writ of error is brought, and the general directions
 as to the money held in debt & stages of possession.

In Reg. 1. by Stat. 10 & 11 Geo. 4. a writ of error is allowed by
 the expiration of 20 years
 In this State 3 years are allowed. What Law allows 20 years
 Stat. 83. B. & C. 110. 111.

When the debt is clear according to an affidavit of Just^s Lⁱ is entitled to recover, ~~this~~ Costs.

If the D^{ft} in Error, previous he receives an order on the Court in the favor of Error. But if he receives in the writ of error he is entitled to the costs according to original writ.

Costs in a writ of Error are never taxed as the debt in Error. For the D^{ft} has the judgment of a Court of competent jurisdiction in his favor, to recover his claim.

If the judgment of reversal does not put a period to the controversy, the case is to be entered for another trial. And it may be entered to be tried by the Ct above if it is capable of trying the issue ^{fact} if not, it may be remanded to the Ct below for a new trial. According to our rule of practice the costs follow the final event of the trial.

In some cases the D^{ft} can obtain the return of the writ of error and costs, ^{other} in other cases in damages etc.

As! If the D^{ft} has paid any thing on the previous judgment his property has been taken, and obtained about the Ex^r he then is entitled on reversal to recover back the payment of the money or the property taken, together with his costs.

If the case is circumstanced as to require a new trial the writ awards the final judgment.

When Just^s is affirmed the D^{ft} in error is entitled to interests regularly. The profit and loss has been satisfied. For it is not reasonable that the D^{ft} in error should have compensation for unnecessary delay.

We have a Statute allowing Costs at the discretion of the Ct. yet as far as my experience extends, no award is made. 11 Bth 284, 284, 284, 284, 284. In the Ct above, costs are awarded.

If the Court alone are competent to try the question of fact, as the H.B. in Eng. and Ireland in Court, the same by the reversal is not so in the Ct. alone. In brief and concise Judge if he pleads, comes together with his debt, damages and all his costs, which are before the Judge of reversal as well as those which have already been paid. Before coming into it his bill is paid. If it had paid the costs taxed against him on the judge's return, he would have received that on the judge's return as damages. But he must not get out of it at all in the same terms in which the Judge of reversal is returned (Post 85. Section 2, 3).

V. If the Court should leave the judge in the last case but not competent to try the question of fact, (as the Exchequer Chamber in Eng. & the Exchequer Court of Ireland in Consequence), the same would have been returned to the Court below, when it might have again proceeded with it as if it is a question of fact, it will be sent to the Judge by the Judge of the Court. B & P. 30. L. R. 10. Exch. 389, decided in 1853. Day, Glanville & Carter, v. Chester Ct. of Exch.

VI. Damages in the Ct. alone, & the acc. of damages in the Court of fact is settled, then it would be a question of fact. The Court will then send it to the Judge of fact as the Ct. below. comes in that, still it may be that if the Court alone can be held by a jury, he may have a question of fact.

VII. Indemnity, in the Court below, is a question of fact, as it is a question of fact, then it enters the trial if the Ct. alone can try matters of fact, then it goes to the Court and the Court has not then to try the claim. He receives a piece of evidence as a piece of evidence, and if the Ct. alone cannot do so, then the Court of fact, the Court of fact,

VIII. Plea in Bar denied to below, and adjourned sufficient.
 Judge ruled, it enters for time, for as yet the is not
 for it, to become an act of the court, for as yet the
 appears he is entitled to receive.

IX. Plea in Bar, adjourned insufficient, judge ruled, if it
 should enter it would be to no purpose, it does not enter for
 enter for his object is to defend and that object is obtained
 by the reversal.

X. Plea in Abatement, adjourned below, that the writ state
 Judge below denied same. Plaintiff enters for time for he has
 a good writ and has a right to present it, judge judge.

XI. Plea in Bar, the last one, judge, "I am not sure" in
 the Ct below, denied in Bar. A common entry for the time and
 writ, but may be not enter if the writ can be made by
 amendments or in case 6.

XII. If plea is true for the description a repetition of statements
 is granted, the reversal. Plaintiff below may enter for time, as he
 has a good writ and a right to present it, and what part of reversal is for
 a against him. A writ was issued below, Judge
 ruled, on a Bill of Ex. it enters for time, here he is Plaintiff
 and Judge below is in his favor. — B. Writs were
 denied below, Judge ruled, then B. is Plaintiff and Judge
 of reversal is in his favor, yet it may enter for time if the
 plea is, for he may properly plead, a matter of the
 fact of B. Writs.

After this all the above cases in which the original Plaintiff
 is supposed to enter for time on a reversal of Judge, the Ct
 below is supposed to have before the try questions of fact, with
 the new the case the result is clear, E. & B. Cases
 below, and then the final third is the Ct. (see 4th & 5th above)

note 2^d. When the Judge in all parts is in the line
 given between the parties, the action is not settled in the
 Court above, nor commences for trial. The litigation is always
 ended when judgment is pronounced. But on a reversal of judgment
 this is many times obtained as appears in some of the
 preceding examples. Illustrations under the title. *Reverend*
of the Court.

New-Trials,

Lancaster - 1825

A New Trial, is always a Second or Subsequent Trial of an issue in point, which has been before the Court. For a New Trial is not the same as a new issue. The word "New" is used, in the last clause, to signify an issue which is new.

The Mode of stating a New Trial is by Petition, which is the usual way, tho' it may be by Motion, which is an absolute, and, any other mode will not do.

The next proceeding is to add a new time is
a rule by the Court upon the application. To this
purpose only the Master should not be granted.
This rule suspended the judgment until the matter
is decided.

A new time may be given at any time by a
final judgment. In 1860.
With a new time may be given after final
judgment & going.

This matter for a new time is an application to
the discretion of the ^{Court}. The demand is not a claim. The
claim is a claim in equity is a claim in equity. The con-
sideration of this claim of the Ct is that it must be given a
new time without prejudice to the claim. The matter is given
an appropriate Ct to do. 2 Wm 366-7. B. & P. 326. 3 B. & P. 451. 1 B. & P. 38.
When a new time is not required what is called a final
application I mean a final claim. If an action is continued
I believe it is for the Ct. & the Ct. moves for a new time & it
is given of course. The Ct. will not give one, so the Ct. will not
give "finality" to be decided as a question of new time. In
the case of the Law had a trial the facts have been investigated
in order to allow to make that a decision of what I have
said. In the trial. 3 B. & P. 391. 2. 2 Y. R. 4. 5. 1 B. & P. 52. 44.
1 B. & P. 35. 2 Wm 1242. 1 B. & P. 228. 3 Y. R. 124.

On a motion for a new time a Court of law exercises the
discretion as a Court of Equity does, when called upon to
exercise its discretionary power. If there is any thing in-
equitable and unconscionable no Ct will grant a new time.

On the same ground the Ct. upon the application of the party
for a New Trial may impose terms as if a New Trial shall
be granted if you prefer certain Books a book or two. That the
party shall admit certain facts; or that he shall be examined
in his own oath. 3 B. & A. 392. 1 Salk 648. 7 B. & A. 529.

In the Court of Chancery. If the ground of the application
is any thing that could at the time, the intervention be
shown the Court or Bank give their decision, is obtained from
the judge of the report.

But if the application is made in any case not upon
the record it must be made by affidavit.

3 B. & A. 391. 2 L. R. 110. 1 S. D. 235.

The only difference between is that instead of having the
facts laid on affidavit, they are proved viva voce.

New Trials are granted by Ct. of Common Pleas,
but by no other Ct. of Record.

Now New Trials may be granted by our Superior
Court, but not by Inferior Courts.

Rev. 9. Com. Stat. ac. line.

The liberality with which new Trials are granted in Eng.
is moderate. New Trials have been granted as far back as
the reign of Edw. 3. but they were then granted only in certain
special cases, but New Trials have become as it were a
mode since the restoration, and are now frequent.

3 B. & A. 384-8. 3 B. & A. 134. 1 B. & A. 394. Salk 648.

On the same ground L. 1.

It was formerly held in Eng. that after a trial at B. & A.
New Trials could be granted notwithstanding the length of time
of service of the jury.

But in modern times new trials are granted after trials taken
 and for the same reason as found in earlier cases. When the
 time was at issue this was ruled 1808 10th 648, 1st 117
 As to the ground of this application gen. it is now a maxim that
 in all cases of sufficient importance to warrant a new trial a
 new trial, unless be given 3d 38, 1st 395, 1st 42, 638.

But when the case is of ^{very} small consequence the Court will not
 grant a new trial tho. they are satisfied the judge took wrong,
 as when the matter in dispute was not more than a half-
 crown. The remark of Lord Mansfield was, "That the judge
 would not be worth the candle." 1st 117, 1st 12
 1st 665, 2093, 4th 16, 758.

It is a gen rule that a motion for a new
 trial cannot be made after a motion in arrest
 of judgment. There is an exception to the rule, where the
 ground of new trial appears after the motion of
 arrest. 1st 67, 1st 10, 325-6, 1st 117, 1st 1.

It has been held formerly that when there were
 two a man dect and the judge convicted a part & ac-
 quitted a part, no new trial could be had as to one
 or any part of them. Now it was said the verdict
 must stand a fall in toto. This rule has been
 complained of by many and now seems to be ex-
 -cluded 3d 362, 1st 10, 326, 1st 814, 3d 609 12
 1st 275, 1st 712, 619, 638.

The cause in which a New Trial may be granted as stated
 1st New Trial may be granted for want of due notice to the
 party. If the Deft has been rather and notice applied
 and defended, he cannot have a New Trial. 11 C. 11. 1. 42
 640. But the Trial L. 1.

2^o A New Trial may be granted for any defect or mistake
 of the Jury before whom the case was tried, but also
 a writ of Error is concurrent with a motion for a new
 Trial. If the Jury made an improper charge to the
 jury, or admitted evidence ^{improperly} 11 C. 11. 1. 42, 43, 44.
 53, 64. Bulla 327. But the Trial L. 3.

The improper admission or rejection is a good ground for
 a New Trial. Yet the incompleteness of a testimony, &c.
 is not objects that the trial is not of itself a substantial
 ground for a New Trial. This the, with other causes may
 have weight in inducing the Ct. to grant a New
 Trial. 11 C. 11. 1. 42, 43, 44.

If it is said that if a cause is lost by the testimony
 of a witness, legally insomuch it is held that a New
 Trial will be granted in Chy. and not at law.

The rule in a Ct of Law here supposes that the
 legally insomuch was not known to the parties at the
 time of trial 11 C. 11. 1. 42, 43, 44.

It is not presumed in this rule that he has
 sworn falsely, but that rule of Law merely supposes
 that a person legally insomuch has testified & for ought
 the testimony may be true. The case would be very
 different if it could be shown that testimony was false for
 this would be a good cause for setting aside the verdict
 and granting a New Trial.

If a witness called to prove a certain fact is with

replied, rejected, and the same fact is testified to by another witness & this fact is not entered at the time no New Trial is granted for this cause, 3. Inst 451.

3rd A New Trial may be granted for defects in circumstances of any of the Issues. Thus if any of the Issues was incompetent & not a cause as to warrant a Challenge and the fact of his incompetency was not known at the time to the party, it is a good ground for a New Trial, as if the Jury had been interested & had before been an arbitrator in the Cause &c. &c. Every Juror is entitled to a fair and impartial Trial which cannot be had if the jury is so situated. Tidd 54, Kent 30, Bac 111, Hild 4.

On this point our Courts have taken this distinction. If the Cause of challenge, is one that goes to the competency of the jury a New Trial will be granted. But if it is that there was a legal cause of challenge but which does not change his competency, a New Trial will be granted, As! If a juror is a freeholder, this is a cause of challenge, but if verdict is given, no New Trial will be granted for this cause.

In those cases according to our former Motions for Judgment are concurrent with Motions in arrest of Judgment. Whenever Judgment is arrested for extrinsic causes, Motions in arrest of Judgment are concurrent with Motions for New Trials —

1st Abscondent in the jury, or any one juror. ^{there is any} If any witness is corrupt or fraudulent, or any party, or if it appears that he rests the case of the jury on chance or if he was inattentive & heard not the evidence &c. &c. Bac 111, Hild 4, 2 Lev 140, Tidd 642. When in a case where a juror declared before that the Jury should not have a verdict in any case whatever, Tidd 645. In all these cases a New Trial will be granted.

^{5th} In early times perfect unanimity in the jury was not necessary a majority was sufficient. But for a long time past entire unanimity is required. And if the verdict is not found by the concurrence of the whole panel. It may be set aside, it will be so. And the Jury if they do not agree they are to be sent round throughout every county wherever the Court moves. and thus they are carted from one county to another until they are fully agreed in their verdict. 3 B. & C. 375-6. B. & M. 2nd ed. 47.

We do not in this Court cast our juries. but if they do not agree. they are ^{not} discharged till the end of the term but they cannot be discharged before the end of the term unless the parties consent, or the Court grants a discharge.

If the Jury is not unanimous in their verdict, it is in violation of law & it is said to be a st offence. There has been an experiment adopted in Ex. & in this Court beyond the verge of this rule. which is. That the dissenting jurors appear with the rest and when the verdict is read they make an affidavit of dissent. And if they make an affidavit of dissent, no proof can ever be admitted to prove a non-concurrence. Comb. 4 B. & M. 2nd ed. 47. 48. 49. 141. 416.

By Mr. C. Lew as soon as an issue is committed to the Jury they are told to retire & locked up in an apartment by themselves & they are not allowed to separate or depart from the room until they deliver up the verdict. & they are not allowed to communicate, until they deliver the verdict into court. (if they do it will be good ground for a writ of Habeas Corpus) B. & M. 2nd ed. 47. 3 B. & C. 375. 1 Vent. 125.

But this rule has been done not to prevent the verdict but that they are bound to a fine for the non-delivery. Comb.

* This offence is a great misdemeanor and subjects the jury to a fine.

So that the result of this rule is that in all civil cases and even for more misdemeanors, Privy evidence may be given.

Mag 193. 1 Cent. 97. 2 Feb. 687. 597.

to Let 227. b. 1 Ben. 4th. Ben. B.

In this State Privy Evidence is unknown, because they are applicable to the confinement of the jury as here in this State they are not confined - 1 Com. 16. 401. 2.

If the juror states to his fellow jurors during the deliberations any private knowledge of his own. This is not evidence or evidence relative to the verdict. This and in some States that the juror has a right to find from their own knowledge. But this is clearly not true because the juror are sworn to decide according to the law & evidence adduced. This private communication is not an oath. But the danger reason is, that Objection testimony may be excluded on a point, this point has a doubt as to cross examination.

The Jury cannot decide testimony from their own private knowledge. 3 Blk 374. 5. Lid 133. Ben. 4th. Ben. 46.

There is much to be said for the point stated of the juror, that for the improper admission of evidence in a new trial may be granted. But how is the Juror to be cured as evidence - can it be admitted to admit it among themselves. The Jury have no right to call before them any testimony that has been examined in Court & examine him & if they do, it will violate the verdict. The Jury are no judges of the competency of evidence they know not what questions will be proper & improper to put to the evidence.

Co. 2. 159. 4th. Ben. 4th. Ben. 46.

If the Jury take note with them any written evidence not exhibited at the trial. The verdict is for this country.

They cannot act when any order except what is added
in open Court. 1 Ch. 235. Ben. & H. Dec. 16.

But Mr. Lush in Reg. is still more strict. Though
they have no right to take out notes there any white
evidence even tho it has been exhibited at the time ex-
cept by consent of parties or by consent of Court. & If tho
do then the verdict is in general dis, and a new tri-
al may be granted. — Ex. L. 227. Ben. & H. Dec. 16.
La. Res. 148. Co. B. 411. 12 Mod. 250.

This rule is equally, viz. That if the white
evidence which they take out there and which has been
read before the J. & J. is evidence in both kinds
the verdict is good but the jury are guilty of mis-
conduct. This I consider an inconsistency, for the
vagueness of the rule. I cannot permit that they should
not be allowed to take out the documentary evidence, but
if you allow the Ex. L. rule the qualification is vague.

In our Practice it is an universal practice for the
Court or both sides to deliver the documentary
evidence to the Clerk of the jury when they go out. No
account is asked before the parties or the Court.

But in any of these cases of misconduct of
the jury. Tho the verdict is not generally good but
bad. However the jury ^{may} have misconducted they never will
be admitted to testify to this verdict. it must be tried
in some other way. 1 Ch. 11. Co. B. 18. This is not for-
mally the rule.

I suppose this rule does not prevent one party from tes-
tifying to the misconduct of another jury, tho he is prevented
from testifying as to his own misconduct
we are never to be held in alleging his own misconduct.

There is another decisive reason why a jury should not be allowed to testify in this matter - an impartial jury might not and every verdict in this case.

If the Foreman desires a verdict by majority it may be set aside and a new trial granted and the other jury and foreman may testify to this verdict. for there is a great difference between testimony to a verdict and testimony to the jury's decision. 1 Br 383.

In all other cases of the misdirection of a jury verdict is allowed of by the court and a new trial granted.

It has been a decided question, what the law is as to a general verdict under the verdict of the Court to find a special verdict, is a case for the Court to decide.

The Court is now settled that this is not "per se" a sufficient cause for setting aside the verdict. But if they find thereby when they are directed to find generally and also find some thing else contrary to the charge of the Court, a new trial will be granted, 1 P. 114 213. But the Court has been told 37, where a divorce case was tried -

6th It is a good ground for a new trial that the verdict is against the evidence. This practice has been adopted ^{not} lately. But in a case arising in this County, where the verdict was outrageously decided against all evidence, a new trial was allowed, and very correctly too.

2 The 1105. Br 117 326-7, Error 37.

1 Br 11472, 1 Br 11473, 1 Br 11474.

A new trial for this cause, unless the Court does clear decision preponderance of testimony against the verdict, it has been said not to be granted. This I cannot be correct. But it has been said that if there is any evidence at all in favour of the finding of a new trial cannot be granted, & to this side, 1106, 1142.

The true rule is said to be by Sir Wm. Black. That when the scales prove doubtful, when the evidence is nearly equal &c. No New Trial may be granted, but when it is denied & the Jury find against it, it is a final verdict, 3 Blk 392.

There has been constitutional question on this point, that the grant of a Nisi is this court, unless the trial by jury. But this is under the Regis of trial by jury. But the Judges on Ct. do not permit the time when belong to the jury. But they give it to a jury for trial after having been once tried, it is no more than to put it from one court when it is tried by jury, & giving it to another jury, & it is a good ground for a New Trial that the verdict is against law. why men is bound to know the law as respects their rights. But in the absence of the Jury, they are supposed to be ignorant of the law, for this comes within the province of the Ct. itself, — — — — — 2 Blk 646

Ent 402, 2 Blk 1078, 2 Wils 307 & 425, 7 T.R. 470, 1 Phill. 279.

But a Nisi may not be granted upon a third round of law if it appears that it will affect the justice which has been substantially done, such claims are allowed litigants and execution, & 2093, 4 T.R. 758, 1 Br. & C. 14. If a new Court will grant a new Trial for substantial causes when the rights of the parties to the decision or claim have been rightly established,

^{§ title} it grants a Nisi if it is shown that the Jury have assessed too small a damages, this is presumed of actus in contract, when the sum is liquidated. But this is not presumed of actus in tort, in fact, when the damages are presumed, 12 W. 1051, 4 T.R. 655, 5 L.R. 127, 1 Br. & C. 14.

But when the jury give too small damages there is mistake in point of law, a Nisi may be granted.

as if by any improper printer, there may be a New York
 the ground of a New York is in the one case Mistake and in
 the other fraud. See 425. 1259. Lick 677.

qth Enquiry Answers ad a good ground for a New York
 whether the action is an contract a tort, the same was
 followed by the court. See 1. 17. 327. In the present
 rule vide 1 L.R. 277. 2 N.R. 244. 47. 3d 62. 4 L.R. 677. 5th 237.
 6th 529. 1 Bar 609. among the last authorities there is a
 diversity of opinions. some hold that the act should be an
 trespass and that a prima facie presumption of partiality, however
 the damages need not be so great as the other presumption
 of partiality.

3 Bar 1846. Lick 231

If by mistake in computation, or the jury give more
 than the law will warrant. There may be a New York.
 This rule can apply only when there is a fixed sum
 of damages. The sum cannot be liquidated. The matter
 may be restricted to calculating the sum. In
 this case the verdict affords for partiality 113. 123 Lick 577.
 1 L.R. 388. 2 N.R. 262. 1 L.R. 537.

In those cases when there is a fixed sum of damages
 and the jury by mistake exceeds it, the J.P. may reduce
 a New York by remitting the excess.

In certain cases when very large damages have
 been given, as in Clavin. Case. I "gave" verdict against the
 a daughter, no New York is given. See L.R. and be given.
 I take the rule to be at the present day. That a
 New York may be granted in other two cases as well
 as in Clavin. 1 L.R. 654. 5th 257. 1 L.R. 277. 2 L.R. 388. 3 L.R.
 167. 3 N.R. 18. 1 Bar. 394. 1 L.R. 97.

It has been said not long since that a New York has never
 been granted for excessive damages in fraud
 In 1 L.R. 277. Edwards says the rule as I think to be correct
 4 L.R. 657. 5th 257. 2d 160. 2 L.R. 1124. 1327.

I am fully of opinion that a New Trial will be granted in any civil cases where the damages are excessive.

10th It has been questioned by a lawyer how far a mistake in pleading is a ground for a New Trial.

By the Law of this State, a New Trial is granted usually for this cause.

11th I think this may be one circumstance which among other causes is a good ground for a New Trial - in 2 H. 131. the principle ground ^{puttable in pleading} was 3 Ben 1385. 1 East. 246 131. 10 Mod 202-3. Ben Ab Trial L 5.

12th But the neglect of a Party's attorney in court is no cause for a New Trial. The attempt to obtain a New Trial on this ground has often been made but on many times been unsuccessful, in this case the party has been allowed by an order in the case at the Attorney's Council. 6 Mod 22. 1222. Ben Ab Trial L 5. Lark, 85. 3 Morgan 84. 112-13. A New Trial for this cause can be obtained in this State only by Petition to the Court; the Petitioner must on petition present sufficient evidence to fully establish the facts related in the petition. 1 Root 573.

13th There have been various attempts to obtain a New Trial on account of the suppression of any of the parties from the introduction of material evidence. It is settled that such suppression is not a valid cause of course a full trial is a ground for a New Trial. The (counsel) circumstances the Ct may grant one. 13 H. 16248. See Dig. Trial L 1. 2 H. 131. 3 East 167. 222. 9 H. 691. 3 H. 16248.

14th Another ground for a New Trial is that a material witness was absent. Where inevitable accident was assigned as the reason for the absence of the witness, the Court will grant a New Trial. 13 H. 16248. 2 H. 131. Ben Ab Trial L 6.

But to suppose a mistake on this ground it is necessary
that the witness should state in an affidavit what he
will testify to, this is in a sense, for otherwise the
Ct. cannot know what his testimony would be material
or not. See 6th Year L. S. Feb 648 3 Alleng. Cases, 84.

14th. That the attendance of a material witness
was prevented from attending by the court & friends
of the opposite party, is good ground for a new trial,
Hollid. 146. See 6th Year L. S.

That a witness, however material was
absent on the former trial unjustly and thus, the
conduct of the Ct. is no ground of a new trial, the
reason is that as the witness has been guilty of
a contempt of Court, and an injury to the party
who requires his testimony, he should be made amends
to the party, Lalk 653. 1 Barnet's 322.

In no case is it a valid ground for the
absence of a witness whose testimony the party applying
might, by due diligence have obtained. See H. Hunt
is the fault of the party applying. Lalk 647, 1st 681.
Mils. 98, Lalk 22. Dec. Ch. 194.

A mistake by a witness made in his former
testimony is no ground for a new trial; to prevent un-
rectifying has always been deemed unjust, he is exposed to
berbery, imposition, &c. in this Court this ground was tried
but was rejected. A new trial. See 6th Year L. S. 3 Alleng. Cases
A. Year 11.

It is no ground for a new trial that a witness on
former trial forgot some material fact in his
testimony, and for the same reason. See 6th Year
L. S. 6

It was formerly held to be a good ground for a new trial that the party has since discovered new and material evidence. This doctrine in Eng^d. is now entirely exploded. This Lord King observes. This is said to be a good case of a new trial, 12 Clow 584. Benthth trial L^d. Carter, 7. Y.R. 269. This case of L^d. is one of the largest cases, 1 M^l 98. Prec. Chan 194. 2 Y.R. 113. 713. 1 M^l 84. Bellows's Exor 93. 1 Bos & P. 428. 430.

It seems to have been the unanimous opinion of the Judges of the Cts of M^l & N^l. to be extremely dangerous to allow new trials for this cause.

15th. In this State however, new, material evidence discovered is a distinct ground for a new trial.

State Court W^l. no. 100.

Whether this provision is salutary, there is a doubt. This State in my opinion has a great tendency to ^{subvert} ~~subvert~~ ^{subvert} justice.

But to attain a new trial here, the application must be by petition, stating the material evidence of the party, & naming the same state at the time of petitioning to what he can testify.

The evidence in this case must also be material.

16th Another cause for granting a new trial is the misconduct of the parties. The misconduct of parties is intimately connected with the misconduct of the jury. — If it can be shown that the party used any undue influence, toward the jury. H. 11 Clow 141. Bos & P. trial L^d. 6.

If it can be shown that the party solicited the jury to give for him, or that he used any influence with the jury out of Court, & that his claim, or new trial will be granted.

How far the jury may be influenced cannot be called in question. for if he was called to testify how far he was influenced, his own personal pride, and even up against a conspiracy, 2 Roll 17, 2 Vent 173.

And similar provision by the Act, a counsel of 12 jurors who attend the verdict have the same effect, as when the Act wrote a letter to two of the Jurors, complaining of the injustice of the Plaintiff's claim. This was held alone a sufficient ground for granting a New Trial. 2 Vent 173.

In short, it is a general rule that any kind of contrivance practiced by the party attacking the verdict, or his Att'y it will be good ground for a new Trial. This term "contrivance" signifies in law any attempt improperly to influence a jury, as bribes, promises, persuasion's, etc. ⁴ ~~Trin. 1797~~ 119, 125, 4 B. & C. 146, 1. ⁴ ~~Trin. 1797~~ 257.
 Dec. 1824 August 24th on the 14th La Fayette called & 4th 21st Entad at New York.
 Lectures first and two days. - 4. 6.

It was formerly held that no new trial could be granted in Equity because of the finality of the action, and as the Judge is conclusive there may be but one action, according to other opinions it could be granted but for the new circumstances. But when the verdict is in the Plaintiff's favor a New Trial may be granted in Equity as well as in any other action. But when the verdict is for the Defendant it will never be granted except for very particular reasons because there is no change of circumstances produced by the first judgment. See All Quin 27, Tulk 648, 650. 2 Tra, 1106. 4 B. & C. 2224.

The same rule prevails when the Equity is in the Defendant's favor.

prevents. But with no other is no fiction, and the jury
is as conclusive as in any other action.

It was formerly held that after
two pleas in abatement and a third time and
not be granted. However this doctrine does not now
prevail. At this day the court may grant a third time in
discretion to any number. In Maryland six or seven
times were granted in discretion. (L. 97 Bac. 114
L. 1. Bellod 22, 23, 649, 4 Bar. 2108, 3 Blk Com 387)

It is a general rule that a
third time cannot be granted upon any exception now
taken at the first time provided the exception might have
been taken at the first time. Thus as respects the
admission of evidence which should be taken advantage of
at the first trial and not afterwards. 10 Mo 220 23.

It is a general rule that a third time cannot
be granted against the Defendant in a criminal prosecution
tho, in various cases one may be granted in his
favour. Cowp. 37. 3 Bologan 108. 2 Stra 899. 1238. 1 Wils
17. 314 59

The rule of the Exchequer. That in civil process for off-
ences higher than mere misdemeanors, no new pleas can
be granted for either party, for no man can be put
twice in jeopardy of his own life. 6 E. 6. 638.

This rule does not obtain in this State nor under
the laws of the U. S. In the Federal Ct of the U. S. a third
time has been granted even in prosecutions for treason.

It has however become a great question
and was not settled. How far the Ct may in such
cases discharge the jury before the case has been

committed to them a before they give in their verdict.

It seems that the Jury cannot be discharged for disagreement in verdict, even with consent of the defendant. But when he does not agree, the jury cannot certainly leave, he is charged. This is Eng. Law.

But in certain cases in Eng. the jury will be discharged in cases of sheer necessity. Now for one may be put in jeopardy of his life and what about both putting in jeopardy ones life it is not done down in the Books. But I consider it means, that until the jury have decided their charge, the life of the defendant is not placed in jeopardy. If a jury dies when the case is before them, then we have had it, there are clear cases of ships crew missing. I have the 4th, Sec. 1. Foster's Law, Kinlocks case, Reg 84, East 465, Lane 501.

But the Supreme Ct in the State of N York in the case of People vs Goodwin, decided the jury being they could not agree being kept till the end of the term 18 Johns. But in Penn. It has been decided that the Jury cannot be discharged tho, they cannot agree. People vs Cook 2 1822 or 23. This decision in Penn. I take to be correct and corresponds with the Eng. Law. There are very cogent reasons why the jury should not be discharged for the reason that they disagree.

But in Eng. when the offences are misdemeanors the Ct may grant a Nisi in form of a Writ tho in Eng. it cannot be granted against him thus in indictments for a Libel, and Perjury, 16, 57, 63, 8 The 468, La May 63, 5 Bur 2669, Doug. 760, 1 East, 159.

When the jury is discharged in a civil case it is always with a view of giving a Nisi. But in the case of

the people as look in Penn. It was held that where the jury were discharged except in cases of sheer necessity, the case was at an end.*

For the rights in the case of the
 Quin L. & S. 899. 1238. 101. 1 Geo 124. 2 L.R. 484. 1 W.L. 17. 316
 58. At New York always, whether one complete
 crime already been.

There are two different measures in relation
 to the degree of gradation of offences. In capital offences
 the rule is "That a man shall not be put in jeopardy
 of his life twice" It is a general rule. "That" "No
 man can be tried twice for a criminal offence."
 This rule however holds strictly where the verdict is
 granted for the death. There is no such practice at New
 York but a grant of an indictment for murder, libel &c.

Of late at New York have been granted with the death
 (for) actions on penal Statutes where the Judge has made
 a mistake in charging the jury, i.e. for mistakes in Law.
 Now, actions (not provocations) on penal Statutes are regarded as
 civil actions.

4 L.R. 153, 5 L.R. 20, 3

Ex. 451.

But a New York has never been granted against
 the death in actions on penal Statutes for a verdict con-
 trary to evidence. But I can see no reason why there
 cannot be, for actions on penal Statutes are regarded as
 civil actions. is and 2 Bellolgan 108

But there is one case when a New York
 may be granted as the death in a criminal prosecution strictly
 criminal as on an indictment. This is when the
 Criminal has practiced fraud, when he has imposed
 upon the court fraudulent practices, as bribing the jury, &c.

12 Nov 84. L.R. 646, 1 Geo 1238. Ben & H. L. & S. 899

1 Nov 93

Contract L. & S. 184

* This decision coincides with the English Law, and I conceive to be just & sound.

The premise of this rule is, that there has been a
 fraud practiced upon the Court, by making a false
 affidavit practice upon the proceedings of the Ct.

If the Party has availed himself of
 false testimony it does not come within the int-
 ent of this rule.

In this State a writ may be
 granted after Judgment, we have in this Court,
 also by our practice the granting of a writ against
 the original judge.

Costs

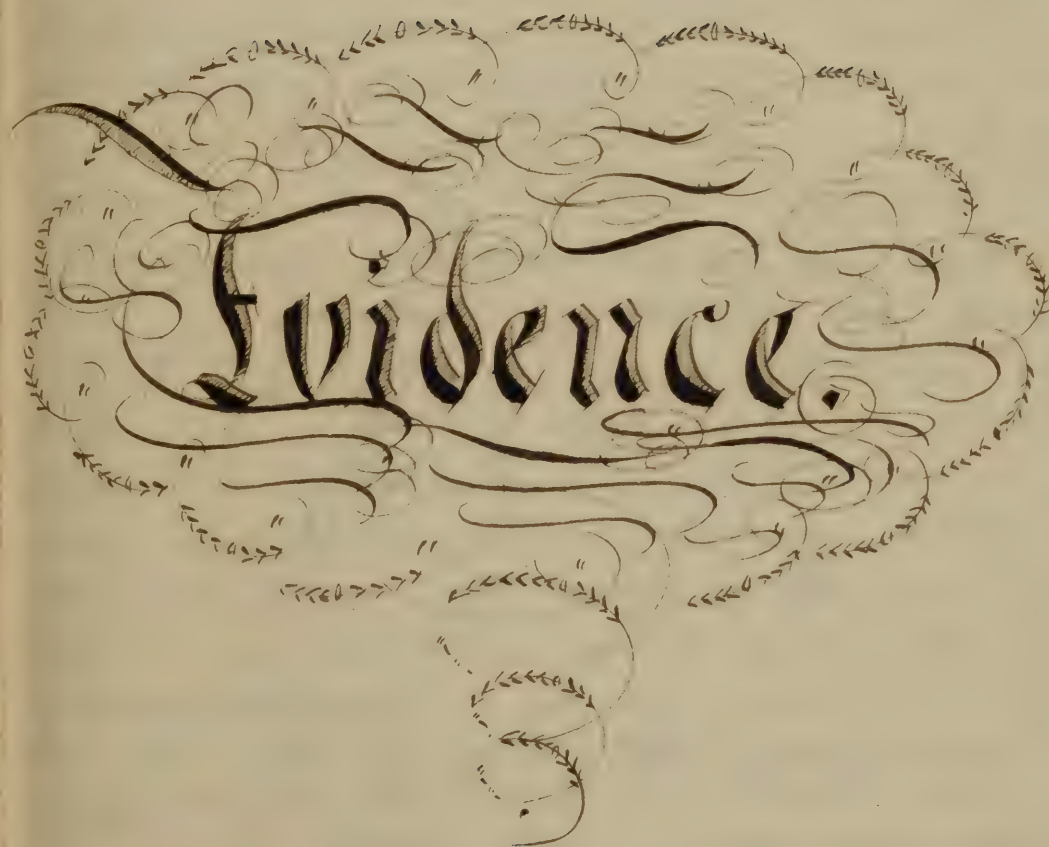
When the costs are directed to the
 the final event, If the party obtains the verdict on
 the first trial, he obtains just as the other has
 entitled to the costs on both trials. But if the Party
 is taken from the writ was granted obtains judgment
 on the second trial he will have costs for the 2^d
 trial only this is the Eng^l rule. 8 L.R. 619
 16 Bk 638, 641. 3 L.R. 507.

Our rule is that the costs abide
 the final event of the suit - i.e. he who
 prevails on the trial is entitled to costs on both
 trials.

End of Materials,

The first of these is the fact that the
 number of cases of the disease has
 increased in the last few years.
 This is due to the fact that the
 disease is now more common in the
 tropics and is spreading to the
 temperate zones. The second fact is
 that the disease is now more severe
 than it was in the past. This is
 due to the fact that the disease is
 now more common in the tropics and
 is spreading to the temperate zones.
 The third fact is that the disease is
 now more common in the tropics and
 is spreading to the temperate zones.
 The fourth fact is that the disease is
 now more common in the tropics and
 is spreading to the temperate zones.
 The fifth fact is that the disease is
 now more common in the tropics and
 is spreading to the temperate zones.
 The sixth fact is that the disease is
 now more common in the tropics and
 is spreading to the temperate zones.
 The seventh fact is that the disease is
 now more common in the tropics and
 is spreading to the temperate zones.
 The eighth fact is that the disease is
 now more common in the tropics and
 is spreading to the temperate zones.
 The ninth fact is that the disease is
 now more common in the tropics and
 is spreading to the temperate zones.
 The tenth fact is that the disease is
 now more common in the tropics and
 is spreading to the temperate zones.

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Evidence

1. The admissibility of evidence is always in all cases matter of Law. Its credibility & weight are generally though not invariably, to be determined by the Jury.

2. 13th Bk 205. Doug 360. Pease & 2.3

2. When a record is put directly in issue by the plea of "Not true record." The weight and effect of that Record is to be determined by the Court, & this issue is always given to the Court. A Record is never directly in issue unless under the Plea of "Not true record." Pease Co 2-3. 3 Bk 330-1 Co 53. 6 L. 117. 250

A Record is of too high and sacred a nature to be tried by a Jury as in any other way than by itself & the record is tried by itself i.e. by inspection. Still if a record is introduced incidentally as an issue to the jury, it is to be read in evidence to them. But in this case however the effect of the record may be concluded as much as if it were put in issue directly by "Not true record." For example suppose in Ejectment in this action, the title of the Pk is prop. execution, & the plaintiff's showing the etc. This record may be introduced incidentally to the jury for the purpose of supporting the title. tho it is concluded. Now "Not true record" is (Pease Co. 2-3) not pleaded. Such is always the case when the record is introduced incidentally. - What is meant by incidentally? It means that whenever a record is not pleaded to by the plea "Not true record" & that record is introduced, it is in issue only indirectly and not directly.

Evidence

The Burden of proof lies regularly upon that party who takes the affirmative of the issue. In a general Negation we are admitted of direct proof. These-facts as a general rule the burden of proof is, on the prosecutor, but when he is disputing the affirmative, 3d R.P. 297.8. 1 Phil. 150, 4 Y.B. 33-8. 1 R. 144. 648. Peck v. 5.

1. But there is an exception to this rule, viz: Where one is prosecuted for not doing an act which by Law he is bound to do: To presume the negative in this case would be to presume guilt in the party accused. This Exception holds as well in civil as criminal cases. Thus suppose a Town is indicted for not repairing the Bridge in road belonging to it. Here the town is not compelled to prove that it was in good repair the negative must first be proved. 2 R. 298. 3 East 142 10 R. 216. 2 B.L.R. 651. 2 Lamb. 654. Peck v. 5-6. 1 Phil. 151.

2. If issue is taken on the life or death of a person concerning, the burden of proof is on him who alleges the life or death of the person, for a person living continues so until some proof to the contrary. This proof however need not be direct, it may be circumstantial 2 East 312 1 Phil. 152. Peck v. 5. 313.

3. There is an Exception to this rule introduced by Stat. That of Jac 1st against Begging, which states abscond of a person from Eng. 7 years without of is good evidence of his death. In this case then the onus probandi is upon the party denying the death. We have a similar Stat in this Stat. 8 East 80.5. 2 Camp 113. 1 Phil. 152-52.

4. So also in case of a legal marriage the legitimacy is presumed as to the issue, & the party denies it then bears the onus probandi Phil. 152.

Evidence

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"No evidence can be used in trial except such as is pertinent to the fact in question. Testimony evidence is used as evidence to prove a point in issue, all other is irrelevant & inadmissible."

In some cases the gen. character may be put in question and in others it cannot. 2 Hylk 205. Peck v. Co. 6.

According to the gen. rule the character of persons cannot be put in question unless the proof will tend to prove some matter in issue.

Of Character.

1 Wils 139. Bulst. P. 296-8. Peck v. Co. 6.

1. In most cases (of the civil kind particularly) there can be no enquiry as to the character of the party to the fact because it is irrelevant to the issue. But still where the character is put in issue of course the character may be questioned. Hence in an action of slander the Dff cannot prove that the Dft. is a common defamer. As on the other hand is the Dft allowed in such cases to impeach his character, now in an action of slander the Dft cannot prove that he sustained a good character as to integrity. Bulst. P. 296. Peck v. Co. 6. 1 Wils 139. 2 B. & P. 532, n.

The reason is that the evidence admissible and in any degree of the law can regard to prove the matter in issue. In cases where the law allows a party to testify in his own cause and when he does testify, his character may be impeached, but he is impeached in the character of a witness.

2. There are some civil actions in which the character is put in issue. Thus in an action on the Dft. may in mitigation of damages not only prove her gen. character but may prove particular facts to impeach her character. The reason is that the Dff by charging the Dft with slander, puts the Dft's character in issue. Bulst. P. 296 2 B. & P. 562, 1 Wils 139. 3. 4. 5. 6. 57 1 Wils 139.

Evidence

But the deft in this ac. is not allowed to prove her mis-
conduct subsequent to his act. 1 Esp R 562, Peake's Co. 7, 1 Wils 13,
1 Ld R 31.

4. In an action for a breach of promise of marriage. the Deft
is allowed in mitigation of damages only, to impeach the
gen character of the Plff as to chastity and every similar
instances of her licentious conduct 3 Esp R 236, 1 Ld R 31.
1 John Cas. 116, 3 Maff. 189. Indeed I conceive this particular
action to be one in which the deft on principle may impeach
her moral character in any point of view. In this country
in which this was claimed to be the rule the Plff opened but.

5.

So also in an action by a parent
for the seduction of his daughter. "pro quod seductione amittit"
the Deft may in mitigation of damages impeach her
gen character as to chastity & he may prove her conduct
to be licentious in particular instances, This case
bears a strong analogy, to an ac for crim. con. It
is well known a man can claim damages when
his daughter has been previously guilty of licentious acts.

6. The top of service is the rule of action, yet it is not
the ground of damages & when the character is im-
peached and proved to be bad, the damages are nearly
nominal, 3 Maf 19, Esp Dis 645, 11 East 235.
Lives M. 678, 2 Ld R 1087, 1 Root, 472.

6.

In the action of slander. It has
been the universal practice in this State for the Deft. by
way of mitigation of damages to impeach the Plff's character,
in this respect it is, in what the word said goes to impeach
it, as to other charges laid in the dec. 10. If one accused
another to have perjured himself in a certain case, & the
Deft for so saying is prosecuted, then the Plff's character is
put in question, and may be proved — — —

But this rule has never been applied in any other State till lately. This rule was adopted by United States Circuit Court in N York. 1820. and lately extended in *U.S. v. Bell* 1844. 2 C. & F. 251. Peck v. W. appears, 22, this position in Eng^d is entirely new.

In *Harden* the Jst may give his condition & rank in life & the Jst is allowed the same privilege. 1 Phil 140. n. 3 Allas. 551.

7. In an action for a mal. proc. the Jst may serve the Jst & observe general, to be led by way of showing & establish cause. for this is an strong indication for making out for all cause. 1 Phil 139, 2 B. & P. 720. In this latter case the defence goes to bar the action.

8. In Criminal cases, when the Jst Char-
-acter is put in issue, ^{by the prosecution} the Prosecutors may introduce his character by proof of particular facts, for it would be otherwise impossible to prove the charge itself.

9. There are certain charges which put the Character in issue & they are those only which charge a habit or course of evil conduct or characterised from indecent, vicious acts. If then a man is charged with murder. *Sheep* B. & P. 1676. his gen character is not put in issue. But as an indication for keeping a cool head. The gen Character is put in issue, as in *aplas* for common B. & P. 1676. But in one case of this sort the prosecution cannot examine as to particular facts with the Jst without giving the Jst previous notice of his intention to have particular facts. This applies to the case of a prosecution. *Sheep* B. & P. 1676. 1 Allas. 324. Peck v. W. 7.

10. But in Civil cases in which the Character of the Jst is not put in issue, as in a case of *Sheep*.

Evidence

11. *Judge, under Bayley &c and for any individual specific criminal act. The Df cannot prove the general character of the Df unless the Df attempts to support his own character by evidence, in such,*

11. *that case of the Df has then opened the inquiry by attempting to support his character. The prosecutor cannot even then examine as to particular facts not alleged in the complaint, because it cannot be supposed that the dft will compare before the court of particular facts of which he has had no notice.*

12. *But it is clear from what has been said that the Df's general character is not put in issue when the Df is allowed to prove his character to be good, as is provided for by the rule under Bayley, Judge &c. 100 C. 202, 320-2, 1 Phil 140. This rule allowing the Df to support his character, is founded on the benignity of the Law, for the evidence is not relevant to the issue. It is not pertinent, even though the benignity of the Law, and rule is more indulgent towards persons accused of crimes, and is an exception to the rule that evidence must be relevant to the issue.*

13. *This right is allowed in some cases, it was formerly allowed only in "quodam modo" It is now extended to cases not "quodam modo" & the rule now is that where the direct object of the prosecution is to punish the offender and not to collect a penalty, the Df may support his general character. But where the object is not to punish the offender but to collect a penalty inflicted by Stat. he then cannot prove his general character - 1 Macaulay, 320-2, 1 Phil 139, 140, 2 B & A 392. Mr Peake says that the Df is allowed the benefit of this rule only for offences where some corporal punishment is inflicted. This would exclude the benefit of the rule to the heavy penalties to a fine, inflicted by Com Law Statute &c. Mr. Peake is not supported by authority, 100 C. 202, 320-2.*

is dwelt against it.

14. This indulgence to the Deft is warranted when the object of the prosecution is to recover a pecuniary right by Stat. Here he cannot prove his gen character, or 2 B & P. 592, or Peck v. C. S. 10 Phil 138.

15. There is one particular circumstance, in which the Deft is allowed to produce evidence affecting the character of another person, viz. On an indictment for a Rape, the Deft may prove the general character to be notorious bad and even previous particular instances of cohabitation with her living. In such facts conduce to show that there could be but little inducement on her part. 1 Phil 140. The result of all these rules and distinctions amounts to this! — That when the public prosecution puts in issue the Deft's gen character, the prosecution may in the first instance prove the Deft to be bad. But 2^d when the Deft's gen character is not put in issue, or charging a particular specific act, the Prosecution cannot prove the Deft's gen character, because a particular specific charge is laid against him, which puts up the character in issue. 3^d When the Prosecution does not put in issue the Deft's gen character: he the Deft is indulged from proving himself to be bad to support his character unless the prosecution is bound to recover a pecuniary right by Stat. for the collection of money.

The Evidence in support of the Deft's character is a claim person, may be particular or general or general, i.e. the latter may testify as to particular instances of the Deft's meritorious conduct or, furnishing reasons for his opinion. I must think that is the most dangerous evidence that ever was admitted.

10 Co 92 Peck. & (356) 9. 1 McAdy 356-7. 360.468.

20. In the example which I have given it will be seen that the rule cannot hold if it appears, that the witness is lost or dying for then Parol testimony is good.

21. If a deed is attested by a subscribing witness, the location of it cannot in general be proved by any other evidence except the attesting witness attesting, that are exceptions in case of death, absence, blindness, &c. all which will hereafter be considered. Doug 205. n 216. 1 Esp N. 89. 4 East 53. 2 ib 183. Esp Dig 237-8.

A more proper rule as I think is as follows, viz.

That the deed cannot in general be proved without calling the witness subscribing. This is now before against his demand. The former rule seems to be too strongly expressed, for his evidence may be falsified. The exceptions to this rule will be found laid down and explained hereafter.

22. But the Law does not require that all the best evidence which the case may afford should be produced. Hence if a deed is witnessed by two or more witnesses, the execution may be proved by the oath of one of them if the jury believe him. Mees & E. 9.

23. As a general rule no precise statement is necessary at Common Law to prove any fact, as Common Law evidence is sufficient. The general rule of the Common Law is that such evidence as satisfies the jury will warrant them in finding the fact. Hence it is that an oral statement is in general all the law requires. 44 Co L. 6. b. 10th e 107. 11th e 106. 16.

Evidence.

25. There is an exception to the rule that the law prescribes no particular number of witnesses, which is in a proceeding for Perjury, when two witnesses are required, for if there be but one it will be oath to oath an equilibrium. The Com. Law requires this 4 Blk. 358. 1 McCally 37. 10 Mass 174. 1 Phil 107. Stat. Sec. 9, 6. Sec 6.6.

26. In England, perjury is a crime, & in some cases, two or more witnesses are required by the Com. Law, such as the Stat. 1 Hen. 6. 4 Blk. 356. 7. Stat. Sec. 240-4. 1 McCally 15 to 21. 1 Phil 108. 84 N. H. 1 East 109. 129. This is not a rule of the Com. Law, 2 Mass Ch 25 Sec 128. 3 Mass 68. 1 McCally 16-31.

27. By the Stat 7 Wm 3. Both witnesses in case of high Treason must testify to the same overt act or acts either both must testify to the same and the other to another overt act, 1 McCally 21. 34. 4 Blk.

28. The rule introduced by the Constitution of the U. S. is still more strict, by this it is required that two or more witnesses testify to the same overt act

Case 1st 5. Sec. 3

29. The rule requiring two witnesses in Treason extends only to overt acts of Treason. Collateral facts may be proved by the testimony of one witness, this collateral fact may be the proof of the persons being a natural born citizen. Stat. Sec. 240. 1 McCally 34. 51.

30. A similar distinction prevails as to the distinction relative to perjury. here too, two witnesses are required to prove the perjury, yet collateral facts relating to it may be proved by the testimony of one witness, 1 McCally 37.

31. Before the American Revolution, when the common law was in force, it is a rule in England that if the witness is a

Declar-
ations
of Dec'd
Persons

or in common presumption unassailable of scientific proof.
2. Hence upon the question of custom a presumption a
pedigree. Hence any evidence in pedigree becomes the
evidence of pedigree cannot be had. But of N. 233. best Dec. 738.
Best. Co. 11. 11. 303. If a custom is proved in a case.
It never be proved only by evidence immemorial. Hence
evidence therefor as to the custom a pedigree is good
evidence. for the is in being, but not to the end
or degree of the thing, for it is immemorial. Hence the de-
clarations of deced persons ^{are admissible} respecting the rights of the
estate or person in question. But the declarations of
deced persons as to particular facts are not admissible.

Phil. 182-3. 14. 456. 5. i. 26. 31. 2

best 512. 12. best 62. 14. 6. 32. n. 33. n.

3. Hence also on the question of ancient limits as to a
parish, town, or state. Evidence may be taken as to the
disputed bound they may serve as to the declarations of
deced persons as to the same. But no particular fact
disputed can be proved, for this particular fact may be
proved ^{by common presumption} in the ordinary way by common presumption. 24. 6.
53. 1. Phil. 182-3. Best. Co. 13. 14. 6. 32. n. 33. n.

4. If upon the deced when declarations are
offered to be proved, had an interest at the time to make
evidence for himself. This fact will be proved by de-
clarations in pedigree. These declarations must be made
by persons competent, & against whom the declarations
will operate. Phil. 179. 180. This qualification of the law
applies to all other cases, in which the declarations
of deced persons are offered in evidence.

Right
of way

5. A Right of way may be proved by rep-
tation. for it may be acquired by prescription, which once
an usage to be proved by reputation.

Ball. 295. Rep. to 12, 6. They also upon a question whether a certain piece of land was parcel^l ^a particular piece of a estate or not. The evidence of accused Parents are admiss^l if all to prove the fact. 2 Yl. 53. Phil. 182. 1 L. R. 735. Peck. & B. The law allows these exceptions from the inability of the party to obtain positive proof. Now ancient limits, &c. we are not able to determine except from proof of the general reputation arising from the declarations of accused persons.

When accused persons are interested and make declarations in their own favour, they are held to be inadmiss^l & admiss^l. But the evidence of the accused owner of land his declaration restraining the limits of those owner's title from him is admiss^l if made in a case. — 2 Yl. 55. 1 Rep. to 458. 4 Yl. 229. 2 Yl. 106. 387. Phil. 193.

Pedigree now proved

Another class of questions in which the law says evidence is admiss^l is where Pedigree is called in question.

1. The Pedigree of a person depends almost necessarily and entirely upon the reputation. Therefore the declarations of those persons who were acquainted with the facts are admiss^l all here the declarations of accused persons upon the question of legitimacy. Now all sorts of declarations of the accused parents cannot be found, it is true, but so far as respects the birth of the child ^{if the child then} ^{is} admiss^l.

Peck. & B. 11. 12. 182-3. Corp. 591. 3. 2 Yl. 719. 6 L. 330. Rep. Dig. 784. 5. 10 Rep. 120. Phil. 174. 80. 1 Bull. 114. But, these declarations are inadmiss^l all if the Parents as persons making them had an interest to be supposed by them. Phil. 178-9. 14 Rep. 331. n. Corp. 594. 2 Selw. 684. 3 Plow. 444. But on a question of legitimacy the declarations of accused persons are now admiss^l & have now except of the Parents during wedlock. Parents are now allowed thus to bastardize their issue. Corp. 591. 2 Bull. 114.

See Dig. 485. 1 Phil. 186. 8 East 213. 11 id. 133.

3. The declaration of parents may be admitted to prove the time of birth, death &c. But the declaration of a man, stranger as a neighbor, are not admissible. Their declarations of intention as to birth, death or marriage are not admissible 3 W. 923 11 East 312. Bac. P. 295. 14 East. 330. 11 East 689.

4. But upon a question relating to the time of birth the written memorandum a declaration of a son & son-in-law who attended the birth, is evidence, as an entry in a Family Book. 10 East 120. 1 Phil. 181.

I have said that the declarations of deceased neighbors as to the birth, marriage & death &c. are not admissible.

5. But the general reputation of a family & a place where one belongs is admissible on the question of Pedigree, Birth & Death.

6. But in all those instances in which their declarations of ^{an admitted} ~~that~~ ^{the} ~~fact~~ ^{fact} must be decided a in-
quiry of law is produced and examined in Court, for of Law alone and especially of being produced in Ct. the evidence itself from him must be decided by him in Ct. Bac. P. 113. 3 Com. 457. 1 Phil. 176.

7. To prove the state of a family, birth death marriage &c. the declaration of deceased ^{persons} who were likely to know the facts & the general belief of the family is good evidence. This is not all, other facts may be testified by other circumstances, as the recitation of one in a deed, a monumental inscription bearing the birth death &c. Entries in Family Bibles. An allegation in a Bill of Ch. by any of the members of the family; & Notations of facts in a will the more will be afforded counsel. An averment upon a single fact there an admission.

is to prove the forgery of a family. Not only then particular instances, But a variety of other testimony of this kind is admissible. *Parker & 12, Bulst & P. Dec 24 1788*
11 East 505, 1 Phil 146.

8. But the place of our birth comes before by hearsay. This is not a question of pedigree, it is a mere point of locality, which may be proved by any admissable evidence, *8 East 539, 11 East 373, 3 M.B. 707, 2 East 27, 54, 63.*

9. In other cases the ^{same} cases will justify the principle, of which I have now been treating. As a written memorandum made at the time of a given transaction made in the ordinary course of his business is admissible but such memoranda are corroborated by other testimony either then and in chief. A question arose between the Brewe & continued a dispute about between them as to the quantity ^{of the} delivered. A memorandum of a deceased Drayman of the quantity delivered was found and was admitted as evidence.

This I say is either corroborative evidence, and is evidence in chief. *Parker & 12, Bulst & P. Dec 24 1788*

Q.P. 282. In *Parker & 14, 15*, notes you will find a variety of cases ^{which} exemplify this proposition.

10. But if written entry in the Book of a Party is more admitted as evidence. This is connected with certain facts may be corroborative. *Parker & 14, 15.*

11. In criminal cases the rule excluding hearsay evidence appears to be somewhat more strict than in civil. But in the former not evidence may be admitted as circumstantial, & by way of illustration that evidence which is proper in its own nature.

Evidence.

A witness may swear that he had heard of the deft. committing a crime, and that the deft being questioned into such crime replied such & such words. Then the witness must testify to the fact as a matter of evidence to the deft. reply —

1. When confessions & declarations have been made with reference to any report & rumor that Report alone must be true by way of illustrating what is in dispute and would be otherwise unintelligible.

Dying Confessions. The murder of any species of homicide there is an important exception to the rule above; being evidence. It is a rule that the declaration of the party that made under the apprehension of speedy death & having actually died, is good evidence against the party committing the murder. It is good evidence to prove & disprove the guilt of the living party. This situation is regarded as creating a sensation a force equal to that of an oath. Leach C. Cr. 563 567. 1st 499, 1st 501, 1st 502, 358. 1st 502, 389. Peck C. Cr. 15, 16.

2. But declarations made thus by a person being ignorant of his death at the time, are not admissible in evidence. Because if he were alive and in Ct. he could not testify. 1st 502, 389. Peck C. Cr. 16.

3. But the declarations of a person recently executed but not under the apprehension of apprehending death at the time of making them is not admissible evidence. because there is wanted that sanction. 1st 502, 389.

4. It is not sufficient that the party should express any apprehension that the person making such declaration should express his apprehension of apprehending death. This apprehension may be inferred from many circumstances occurring at the time. 1st 502, 353. Leach C. Cr. 563.

1 McCall 383-5.

It follows from the last rule that the question whether there was an apprehension visited or not, must be left to the jury, for the purpose of deciding whether it is admitted, all evidence is not. But the admission of the admission and deduction in evidence is not conclusive, to commit the party to the jury, they may regulate themselves by their opinion whether the facts are and of course of death or not. This case is analogous to the principle of law. 1 McCall 383-6. Lewis & Clark, 364, 397, 563.

This is analogous to the case where a person offers secondary evidence to a deed lost or destroyed. In the latter case the court will not admit secondary evidence until the original is lost or destroyed. Here the secondary evidence is admitted by the court yet the jury can determine whether the original deed is lost or destroyed and if they are convinced it is not, they need not admit the secondary, it allows it to have no weight.

5. Dying declarations are under similar limitations admitted in civil cases. Thus where a man on his death bed under the fear of approaching death declared that a certain person had committed a crime, but that he had afterwards forged another will, affirming when the question arose as to the validity of the second will, his dying declarations were admitted in evidence.

3 Burr 1244-55. 6 East 148. 10 Mod 125

6. As to what a dead person has before, sworn to between the same parties and in relation to the same question of fact, is always admissible in a subsequent trial, whether the same trial or a different trial. This is a rule of evidence which runs out in England. 1 McCall 383, 54, 16, 373. Foster & Co. 337. Parker & Co. 60 2 H. & M. 65.

Evidence

In civil cases it is said this rule does not obtain. Now the principle on which this is founded I cannot discern & can be attributed only to the benignity of the Law. Peck. 260.

Testimony of an absconding witness

1. What a witness absconding has been before a Ct. of equity may be proved against the Def. or true if it can be proved that the def. (was) assisting him in absconding. 1 M. & C. 285-6, 1 East 373, 2 Hawk 605. The principle of this rule is that public justice must not thus be defrauded. This rule can hold only in civil cases, for civil cases there is no Ct. of equity.

Confession of Parties

There is another species of evidence which is not strictly hearsay but which are generally deemed "confessions." 1. It is therefore a case that what one of the parties of the suit has said out of Ct. may be given in evidence against him, for every man's confessions are in general good evidence against him. This is against any other person they are inadmissible.

7 T. R. 663. 1 Phil. 71. Peck. 266.

2. A Party who acknowledges is not (always) ^{in gen.} ~~admitted~~ ^{con-} ~~ceding~~ ^{ceding} against him, for he may rebut his confession. Thus if in Aff. by A. & B. B. has acknowledged the indebtedness he may still deny & disprove it. 1 B. & P. 49. 11 Mod. 39. 1 Phil. 74. B. answered to 80

3. And in many instances a party may deny any & disprove his written acknowledgments not under seal. In a Bill of exchange, where the ship owner gave a Bill. As follows "Recd. of A. B. good to. in good order and good condition" Now notwithstanding the written recd. the Def. was allowed to prove

that at the time he rec^d the goods they were in a state of
spoilation, & thus deny his rec^d. 1 Phil 74. 7 Idem 297.

4. But when the party embracing accomplices
his confession with other declarative evidence the confession
in his own favor. Then declarative must be admitted
if made at the same time. but at any subsequent time
his accomplices declarative will not be admitted. They will not be
admitted to do away his proof of a confession. 1 East
462. 1 Comb 439. 3 Cr 4 Cr 215. 10 Phil 79

5. And a party is never allowed to intro-
duce his own declarative in his own favor unless they
are ^{part of the} res gestae. When one is sued on a parol contract he
is allowed to call in witnesses to prove his words used
in making the contract. When one is sued for an
assault which might be done away by words used at the time
then words are admissible to show that no assault was
intended.

6. Whenever the declarative of a party amounts
and any act of his in question he is at liberty to
prove them words made use of. as in the case of ten-
der. when the party alleges that he tendered the money
in satisfaction of a debt. then words are admissible to
show for what purpose the money was tendered

This rule holds in civil cases. 6 East 188. 1 Id.
case 373-5-7. Esp. Dig. 3033/2 / 1 Ann 658.

7. And there is one instance when what a party has
said in another trial may be proved by other evidence
in a subsequent trial. This holds in action of "malicious
prosecution." This rule is for the protection of prosecutors
who may not succeed tho, they prosecute from just cause
And even what the wife has sworn to in the former trial is admi.

shall to prove probable cause.

Ed. Mal. pers. 6 Ed. 216. Dig. Dig. 534-6.

8. And a party's confession is evidence as to him self whether he has or is not in his own right or in the right of another, for he is the party on record. 7. 716. 583. 1 Phil. 72. Peck. Co. 17.

9. On the other hand the confession of a party really interested the other party to the record is good evidence against the party. Thus if a bond is given to A. conditioned for the payment of money to B. But confession, as to the payment for instance, is good evidence against A. the party to defend the fact. B. has a right to receive payment. 11 East 578. 588. 1 Phil. 257. 10 East 345. 3 Clerk 465. 1 Phil. 72.

Self-Confession, and the declaration of a third person made or in the presence of one of the parties and not contradicted by that party is good evidence as to him. The silence of the party is construed into a tacit confession. This is deemed also not sufficient conclusive evidence. Peck. Co. 16.

2. But the declaration of a third person a party's wife notwithstanding in his absence is in general no evidence as to him. Thus when the party's wife had acknowledged before the trial that she had received the money from her husband, this acknowledgment was not sufficient in evidence. 2 Str. 1074. 676. 680. Mills 577. Peck. Co. 16. 17.

3. And the rule would be the same as to the declaration of the wife when the husband is a party, when he sues for her as &c. &c. and in her account as &c. 676. 686. Mills 577.

4. An acknowledgment of an individual member of a corporation as agent or not accompanying any action of a corporate duty or right is no evidence as to the body Politic. 3 Dig. 443.

10thly. - But when a wife in a transaction
being regulated by married women continues from her
husband's declarations in relation to that
transaction all good evidence as herin, as: her acknowledgment
for money due from her husband. for money her child &
purchasing it with money her sentence. The 52d 16th 142, 143, 144
12th, 13th, 14th. This case is a perfect anomaly, and oppo-
site to any analogy in the law. I took this to be a di-
rect violation of the rules of Evidence. As she cannot be
considered even as an agent in this case.

Admission of Servant or Agent. 1. The admission of a Servant or Agent of master
at the time of transacting the principal business
and relate to it. They become a part of the res gesta
and are good evidence as herin the principle 3d 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100. 10thly 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.

2. But if their declarations of the
Servant or Agent of master subsequent to the transaction
in question. They are no evidence, for they are then
no part of the res gesta. 16th 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100. 13th 2d 5th 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100. 2d 5th 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100. As in Example.

It states a principal makes & seals an instrument
and delivers it as an escrow to his Servant to deliver to another
person, on condition of the other being doing some particular act
on a future day. Here if the Servant delivers the escrow stating to
the deliverer the condition, here the declarations of the agent
are admissible evidence.

3. If a debtor at the time of absconding declares
his motives, as: to avoid creditors (as to settle himself) &c, his
declarations are admissible to prove his Bankruptcy. But
if he declares that he was about to make a purchase in a foreign
land, this would be evidence to the contrary.

Evidence

But his subsequent declarations after his election are no evidence for him for then they are no part of the *res gestae*.
28. Aug. 1834. 5 N. 512.

4. When a party to a suit reproduces a statement in the pleading with the names the caption of the latter evidence as part party. Thus an admission by a party, or fact as such, the admission of his testator as good, is an admission to the heir as well the admission of his ancestor are good evidence. These admissions must be good evidence for they would have been good in the testator's ancestor's life time, for as an admission for an estate on many purposes, the admission of the party creating of his liability to the estate is good evidence, as the Sheriff, of the Sheriff's estate. 4 N. 436. Peck 16. 65. 18th 169. The admission of the party creating would have been good evidence as himself. It is implied that the Sheriff stood by his story, and the credit of the claim, of which the caption of the debt, the only evidence.

It is as if a Sheriff of a police court "would invent an acknowledgment of the indebtedness by the original debt is good evidence as the Sheriff, is an agent."

5. It is also when a party to a suit reproduces a statement of another, with the declaration of the latter, as his own, this is good evidence as the party, thus upon a question of the Sheriff's jurisdiction under 14. order & 13. captioned that he has no title to the property, B's caption is good evidence.

6. It is a general rule that when there are several admissions as to the fact the caption of any one of them is good evidence as being only one admission as the other. Kellogg 18. 1st ed. 40. 209. Peck 16. 243.

And therefore in an action on one debt as one of two joint & several debts, the confession of the other is no evidence in the other debt, the action be on a bond, for to admit such evidence would be to permit one to charge a stranger by his confession out of Court. Term cases Reported in Hale 62. 174. 203. among in the Stat.

7. But there is an exception to this latter rule in case of joint partners, for the one of them being sued, and the partnership being established, the confession of the one not sued, is good evidence with the one partner who is sued. This would not hold if they were not partners, See 16. 203. 208, 11 East. 589, Phil. 72-3. Also the case is that the partnership being established each partner is the agent of both as for the joint, and the act of either is the act of both, and this rule holds tho the confession made by the partner not sued tho, confessed after partnership dissolved. See Whitcomb v. White, 628. 30. 1 Phil. 73. 1 Gauntton 104. Carter 3 John. 536.

We said that, the confession of one of two joint & several debts ^{when sued alone} the other not partner is no evidence with the other ^{to prove the debt}. But the contract being proved & established & admitted, in that case, the confession of one is good evidence with the other ^{to take the case out of the Stat. of limitations}, as for any other purpose in law. The contract being established the two debts as to those particulars, are partners, See 629. See also 15. 203, 1 Phil. 72-3, 3 Doug. 309, 5 John. 52.

Indeed in such a case a contract being established the confession of one of the debts, is not ~~considered~~ as a declaration but as a fact & an act which has virtually the effect of a new promise.

But this rule of confession is not ~~not~~ ^{not} ~~precluded~~ ^{precluded} ~~in~~ ⁱⁿ ~~cases~~ ^{cases} ~~of~~ ^{of} ~~joint~~ ^{joint} ~~debts~~ ^{debts}.

Evidence

8. In an action or two Just deff. for committing a crime or tort the admission of one cannot be evidence of the commission.

This is a general rule. But if there was an illegal combination and that combination being admitted a admitted the declaration of any one of them made at the time of doing the illegal act, made or for the motives of the party at the time is good evidence in the other. 6 Y. 1652. 1 Phil 73. 4. A case of great celebrity and in this State, 2 Day.

9. If one of two depts suffers a default & the other pleads to the issue, the declaration of the party defaulting may be given in evidence for the purpose of proving the amount of damages, not for the purpose of proving the other party guilty. There is but one verdict and as to the quantum of damages both of the depts are still in trial. There can be but one appt. of damages. 1 Day 33.

10. In Civil Cases the confession of a party out of Ct. or before the Magistrate is good evidence when self. Kelgins 18. 2 Hawk 604. 607. 1st Ch. 42. 3rd Ch. 19. 1 Phil 71. 81.

11. It was formerly held that proof of a debt confessed uncorroborated by any other evidence and not in a judicial proceeding was insufficient. But this is exploded.

The doctrine now is that the confession alone without any other corroborating evidence is sufficient to prove a debt. 1st Ch. 51. 273. 2nd Ch. 243. 3rd Ch. 319.

12. But the confession of a person ^{on the one hand} by torturing a third, or induced by promises of pardon or favor on the other is not admissible evidence. 1st Ch. 42. 4. 2nd Ch. 18. 20. 2 Hawk 204. 211. Contra Kelgins 18.

There is a person confessing his guilt, or the promise of his being a public witness is still evidence, it is

evidence against him. See also Cas 636, & will not be admitted.

13. But when a confession obtained in any of these modes recites in the disavowal of any material fact or facts, this disavowal, & the mode in which it is made are good evidence, suppose a confession obtained & obtained by means of force, & at the time of making the Confession, relates where the goods he stole are hid, and if these goods are found where he related them to be, it will justify the admission of evidence relative to that fact, for here the fact of finding the goods coincides with his confession, and does away that danger arising from extorted confessions.

1st Mass 47-8, Peck v. L. 20.

What does this evidence amount to then? It removes the presumption of the Prisoner as to the confession in the issue.

By Stat 12 Mass. Ch. 273. The examination of a Prisoner taken before a Magistrate is evidence as the deff. in his private trial i.e. his admission is not examined as evidence in the trial of felony. But in these States no more private trials, and I think the plaintiff is bound to be attended with danger the Magistrate may be ill-treated or unacquainted with the law, & ^{thereby} liable to mistakes. See 2 Mass 604-5, 1st Mass 376-8, 284.

1/2.

Offer of compromise

But there is a material distinction between the confession of a party and an Offer of compromise. The latter is no evidence in any case whatever, but is frequently offered as this compromise for fear of its being made or taken, but it is a vulgar error. Mr. D. L. Mansfield says "every man should be permitted to say his peace"

Evidence.

It certainly would be hard to say if it should a party plan making an
 offer to compound.
 B 200. 15th B 143. 15th 78-9. (Feb - 18. Pre 17. 236)

Pl. B 200. / Lib. B 143. / M^h 98-9.

Feb - E 18. Rec 17. 236.

But the cessation of military hostilities during a treaty of commerce is good evidence to the point. The Law, 1 Esp. 16, 143, 2 id 475, 3 id 113, Phil. M. 236 Peck 16, 5, 1 Phil. 99 Peck 16, 19. I have heard it reported by some individuals that one Japanese a Japanese C. had seen's this rule and would not admit any suspension during the treaty of amity.

Admissions by Acts

1. Then one admission by acts what is plain cases all one.
- begin upon him, and then are any a great variety of
cases where his admissions are conclusive and he cannot
disprove them. And in the case of an expense, and he is
sued as an executor, here he cannot deny the fact
of his being an executor if he has had on him the
out as one. 3 Y.R., 635-7, Peckham Co. 20,

2. Upon the same premise if a man be
with a woman as his wife holding her out to the public
as his wife, her entrance for purposes in this
situation will bind him - 2 Pop. R. 637, Peck. Co. 20.

3. There are some cases occurring, an analogy to those, the most striking the same, as for example. If a mortgage in prop. lease had its annuity paid at the expiration of the lease the lease would carry the mortgage - good title.

4. It could also be said, that a line of it from B.
the member, and in an arc by B. A was not allowed
to allyed no title in B. Parker, L. 21, 5 G. 4, 3 d., 632,
1 d. 760-1 m. 2 A. 16, 260.

Presumptive Evidence

1. All evidence whether direct or indirect is either direct or presumptive.

1. Presumptive is an inference from certain facts proved & decided, of the existence of other facts of which there is no proof or dispute. This process the evidence is circumstantial &c.

2. Evidence which may be true consistent with the non-existence of the fact which it is intended to prove is presumptive evidence. If stolen goods are found in the possession of J. S. the fact that the goods are in his possession is consistent with the ^{presumptive} fact of his being a thief. 1 Mass Rep 36, 6

3. But all such presumptions may always be rebutted. 10 Mass Rep 21.

4. Long undisputed ^{adverse} enjoyment of any incorporeal right franchises or easements, affords a presumption that this right franchise or easement had a legal foundation. Any thing may be presumed of an incorporeal right by long undisputed adverse possession.

This rule is founded upon the principle of long & quiet possession. To prevent state claims of an indefinite length of time from arising, as to property against those who have had long undisturbed possession.

10 Mass Rep 103, 216, 1 Mass Rep 388

6 Mass Rep 208. 1 Mass Rep 306 1 Mass Rep 403. 2 Sand 17 Mass 4 Day 244.

This doctrine of presumptions is now made applicable to a great variety of (diverse) cases, formerly not attended

Evidence

Don't have adopt this rule of pen. & it in making
to the Stat of Law. As it is supposed that no one could add
your paper for a long time without some a good little book 182.

And the rule now is in Cos. that the undisturbed (right) adverse possession of any unincorporated right or franchise for 20 years is held to the prejudice as evidence of title & right. So Blackwell & I were more judges say that this evidence is conclusive of the title & can generally be used this way. If there is a man who claims for 20 years a Water course is opposite to the property of others. It is conclusively made known to the conclusion of the right to use it, 5 East, 2 Land 115. 11 Wm. & P. 400. 2 Feby 464. 2 Com. R. 584, Cap. Dig' 636, 1 Com. 463.

5. If it and then China, and here for 20 years in Eng^l have examined a regt of way over B. and the long unintermitted regt of papers are the land is (Lyons?) records for 20 years. I say, it seems a permanent list of (Lyons?) a regt,

60 If a Bond has been doctored for 20 years, as with the note now 18 or 20 years, without payment or full payment, the length of time elapsed is immaterial for order of payment, as the plea of payment is sufficient to this great elapse of time.

Dec 24 Co 24. 1 Bk H. 532. 3 P. 11:37.

1. Bur 434. 1964 1.76.270.

7. But if Mr. Poff can account for delay, in not collecting the debt, as that he was on sick H. he will be entitled to recover, & then there will be no inference the one way, between them cause & that there is not the fact of consideration.

2 March. 184. Pop. Gr. 226. Count 214. Peck, L 24. m. Pop. Gr. 248. 64.
 Area 562.

There is no Stat of Limitation as a Bond; and therefore one of long duration which has stood for years as 20th B.D. is presumed to be satisfied. But I have observed that this presumption may be rebutted.

I have observed that the length of time in Eng^d in which to present a paper for an order or even say in what order paper is an order or order of right & title of and payment & satisfaction of a Bond, is 20 Years. But in Limitation, an order of 15 Years will have the same effect of barring Claims.

8. If the obligor can prove any discharge of the debt within the 20 years, he may recover. For the presumption is rebutted, or if he can prove that the obligor has paid part of the debt, or the interest. See 828. See King, 1870. Pates E. 24. n.

9. To also a prior inspection of the debt before the date of the last suit within 20 Years, before the presumption of payment. Now a prior inspection and discharge, before the payment of the debt of Limit.

10. It is a rule that an indictment of a writ is put in the hand of the creditor before the 20 Years had elapsed is good evidence of just payment. If it is not found that before 20 Years had elapsed the creditor had not given the defendant, because before the expiration of 20 Years, he might commence a suit. But the rule is a dispute of the evidence does not extend after the date of 20 years, in case, et. v. Dig. 228. J. See also 25. n.

11. And if a creditor is to a debt made by a statute & given a receipt or any one estate, it provides that the creditor is to be paid. And the creditor is to be paid. But this presumption may be rebutted

Evidence

38 Blk 371. Corp 103. 17 R 388. Stat 46 24

12. In this State there is no rule, prescribing a form of paper or Bond or notes, for the issue of a title of Land outside and there is no occasion to resort to the Statute in this case. The Bond to come into the title of Land, must be for the payment of money only.

13. More length of time must of the period provided by the Statute, to show when the subject is within the State, it is not a sufficient guard for preserving the extinguishment of any right. Corp 246. Stat 46 24. n.

14. If a Bond or note payable in money only, the period provided by Stat is 14 years. If any one action is kept at any time before the expiration of the time provided by the Statute, there is no presumption from the length of time, but a presumption within the Statute that the debt has been paid.

15. I have observed that long uninterfered adverse possession of an incorporeal right, is sufficient to acquire the right in possession till.

But length of possession alone is not a guard for preserving a title to Land, as to Land, a collateral title detaches the Statute and has succeeded a case by which the title may be lost or acquired.

But suppose again in which the Statute does not allow by reason of some disability, as for example, if some owner holds a land, for 40 years, and then another man for 20 years, and the land has the Statute cannot be presumed to have been lost by time. Because it is not sufficient to satisfy the intentions of the Statute.

In Canada the Statute of Limitations is to enter on Land is 15 years. If from the Land has been in possession adverse to an owner for the time of 15 years during which time he remains a tenant, and a notice has been by the Statute after serving at full age the Statute

Evidence

There comes to this. There added a statement for
a distance may be found by circumstances side
as present can be made. From the State of Land. Bellup
398, what side. In the State of Land. present records.
2. Can be 607.

No. When length of paper is added as a piece of paper.
But it does not hold as things appear. The State
of Land has done all there is, numbers in the State.
and to adopt a contrary rule and admit the
powers of the State.

Of written Evidence

According to two kinds 1st Public 2nd Private.

Public under is all of these kinds consisting
1st of Records. 2nd of Public documents which are
in records. 3rd of Private writings

Records 25.

1st Records

1. A Record is a public memorial of the acts
of the State or of the proceedings of public assemblies to
the laws and customs of the State. See Co. 4. Sec. 14. 35.
Book 52.

Under the written memorials of the acts
of the Legislature & the judges & Judicial proceedings
of the State are deemed records, in law.
See 107.

2. A Record cannot be contradicted by any
evidence whatever. A dispute of facts absolute & un-
-controlled verity. No man admitting it can
use any thing in contradiction to it. See 10. 21.
Book 8. 27.

If added a record is made evidence

Public' notes must still be written, ^{if preserved} a copy of it is
proved is good evidence

3 Talc. 154. Doy 572. Peck. Ex. 91. 100
Moz. 355.

8. On the other hand when the writing was not
it may be evidence of fraud & a copy of that writing
is no evidence. Hence the copy of a copy is no
evidence, tho it is proved to be an exact transcript
of the first copy, proving the second copy to be a genuine
copy of the 1st copy is no proof of the genuineness of
the 1st copy. See Reg. 154. 100 Moz. 356. 3 Talc. 154

9. Public' acts of the Legislature require
no proof of any kind in the State in which they are
was passed, for then being the laws of the land are
supposed to be known to all. When statutes are
indeed read in Public' Cts. of justice. But it is not
not to show the Law, but to aid the memory of
the Judges as to minute particulars. See Ex 10,
Butt. 222.5. Peck. Ex 25.7. n.

10. Private Statutes not being Statutes
of the gen Law of the Land are not supposed to be
known to the Cts. of justice nor to the public'. & Hence
they are required to be proved as facts, i.e. they
are to be proved by Copies, tho they are records,
but records of private rights, and must be proved
like all other records of private rights. Butt. 222,
100 Moz. 126. Peck. Ex 27.

11. The Private Stat Book is no evidence
of a private statute, for a private Stat belongs not
to a Public' Stat & has no business there, & Private
Statute is nothing more than a private unauthorized
copy, not verified by any ^{state} or any official sanction. See
Butt. 225. Peck. 17. = Galt 13 Carter,

I am not speaking of *Formal Notarials*.

If however the Legislature declares that a *Notarial* is its nature, private, shall be accorded public. It then becomes public, & no need of any proof as the *Quare* on bond judicially to take notice of it. It is carried into a public Notar, & at least it binds all Cts of justice to receive it as public, *Parker* 27, 2.

Copies of *Private Notarials* are certified by the Secretary of State.

12. But Copies ^{of the court} of an *Ct. of Justice* by an *inferior* are certified by the *Clerks* & *prothonotaries* if the *Ct.* has not officers, & if not by the judges themselves. This *provision* I believe is now done throughout all the States. This certifies the *truth* of the *Ct.* if the *Ct.* has a seal, & the *Cts* of each of these States are presumed to know judicially the seals of the several legislatures and of the several *Executive* *Cts.* throughout this Union. 46, 112, 113, 153.

Exemplifications

1. Copies of records under seal are called "exemplifications." And it is the rule of *Common Law* that seals of public records are free evidence of their truth, without oath, or verification. ^{in matters of fact} *100, 125, 6, 2, 100, 155, Parker* C. 29, *Silk* 10, 18, 1 *Sid.* 146.

2. The form now held as a public Notarial Seal of a foreign State at what is called the *General* of the State. The *Notarial* Seal of *Holland* *Dummett* &c. is presumed to be true by judicial *Cts.* in this Union, and no evidence is admitted to prove them. They are evidence of themselves. 2 *Co. R.* 88, 90, 60,
42 *Ill.* 416, *Parker* 173, 2 *Cr.* 4, 187.

Evidence.

3. But this rule does not hold of any former *Memorial Court*. The Seal of the C^t. of R.B. a C.P. is not just in
 them here, but must be paid. I take this to be a
 Pullin' law closed in all states. East 221, 2 C. R. 40, 5
 Burr 473, 3 Johns 310, Porter v. 72 3, and not a rule of Court.

4. I would also here by way of distinction that
 the Seals of the C^t. of Admiralty are supposed to
 be here and an index of themselves, this will
 be explained hereafter.

Mode of certifying Records

1. ~~As to the mode of certifying records,~~
 By Law of Congress. If an *Exemplification* is certified by
 the Clerk of any Court, or other ^{any of the C^t.} to be accurate or good
 and true, it may still ~~that~~ must be authenticated by the
 signature of a Chief or principal Judge or of the
 Clerk or of the Secretary or of the Chamberlain of the
 State. "That the attestation is made in due form
 and by the proper Officer." 7. U. S. Stat. 153.

2. The same statute requires that all
 copies of records or other papers kept in a public office
 not appertaining to judicial courts, must be authenticated
 by the keeper of the office with the officer's seal, and this
 may be by the judge of the Court, or the Chamberlain, Secretary,
 or governor. 7. U. States Stat. 153.

There is now an abridged collection of the U. States Statutes
 to the page in which I cannot refer you, I leave it to
 your own regard as to them in our papers.

Copies of the records of the C^t. of Justice are of great
 value.

1. Those of the 1st kind are called "Exemplifications" or
 taken under the G. Seal, & copies under the Great Seal
 are deemed the best records. Others are copies, or
 deemed transcripts & they are in England and

upon the plea of "Not true record." when this plea is made before a judge or a justice of the peace, whose record is in question.

But if "Not true record" is pleaded in a superior Ct. of jurisdiction to a record in an inferior Ct., the record is taken up, by "Certiorari," as if the record of a Ct. of Common Pleas is tried before the H.B., *Fuller* 14, *Peckham* 28, 1 *Id.* 145-6, *Shaw* 411 a.

III. Copies of the 2nd kind are called "Exemplifications" under the seal of the Ct. to which the record belongs, so that the address comes only in the final.

III. Copies of the third kind are denominated "Office Copies" and they are such as are certified by an officer appointed for that purpose and not under seal. *Paul* 228, *Fuller* 21-2, *Peckham* 29.

IV. Those of the last class are "Sworn Copies" which are those which are sworn to and proved by the oath of the witnesses on the transcripts being compared with the original. These are private documents *Fuller* 22, *Peckham* 29.

1. In the practice of this State "Exemplifications" are common, i.e. those under the Great Seal, we have no exemplifications, with us the "Copies and the Seal of our highest Ct. are the highest evidence i.e. "exemplifications" that exist here.

2. But when "Not true record" is pleaded in the same Court where the record lies, the judges inspect the record. There is here no need of exemplification, & this must be tried by the Court, & not by the Jury, *Peckham* 29.

Evidence

3. But when a record is made of an instrument "publicly read" cannot be pleaded, because matter of indifference cannot be traversed, because it constitutes part of the gist of the action. Suppose in an action of Ejectment, the P^lff claims under an Ejectment title on record, here the Def^t cannot plead "not till read" for the P^lff does not state the record, and also the issue must go to the jury, and they cannot say an issue was on a plea of "not till read." But N.P. 230, Lanes 46, Ells to 26, Lanes 473

4. "Official copies" are given out only by officers appointed by Law for that purpose. It is not to be proved by real depositions. It is verified only by the official certificate of the officer appointed by Law, such as Constables, or clerks, certified by Clerks of Counties, Land clerks, Parish Clerks, school misters, clerks & various others. We have no Clerks of Counties, But N.P. 229, Peck to 34, Ells 23, Shaw 110, 6.

(Copies) of public writings are preserved by official copies or sworn copies.

5. But that you rule supposes the record to be in existence. But if it can be shown that the record was a record once existing, destroyed or cannot be found, upon order is admitted, especially ancient records, this is ^{not} applicable solely to ancient records. When under record being lost upon sufficient order the Ct. will order a new one to be made out. But 257, 1 Jack 285, 1 Med. 117, But. 228, Peck to 29, 1 Jack 8, Ct. will order a new record. vide — Ells to 223 2 But 722 Peck to 30

6. Generally any entry of a record to be dispensed

must be of the whole, not, excluding of any detached part of the deed. This rule is applicable to all other written instruments, a single passage or sentence in a deed word or may alter materially, (taken separately,) the whole contents. The ancient maxim was, "Soluta a sociis" Lill 17.23. Bro 207. 227-8.

For & against whom the record in a prior civil suit is evidence

1st A general verdict in a prior civil suit, only available to a subsequent suit between the parties or privies thereto, third persons cannot be excluded by credits between other persons. They are bound for all those principles which the parties themselves have undertaken, their principles are numerous and need not be recited, Ray 730, 74, 1112, 2 Lill 243, 624, Peake 38, 54. Buller 232

Who then are privies to prior civils? The words of priority refer to the land and you. There are none other mentioned in the former deed but all cases of priority are

1st Priority in Blood as that which exists between the heir & ancestor, so that a verdict concluded upon the ancestor, is so upon the heir provided it concerns an estate claimed by the heir at law. If the ancestor was concluded in his life time of any estate of inheritance, the heir is also bound in this respect in the same manner as the ancestor himself would have been had he lived. Co Lit 352. 3 Lill 353

2^d Priority in Estate, as that which exists between feoffee & feoffee, grantor & grantee, lessor & lessee, a particular tenant & reversioner, lease joint tenants between ^{between} sharers, &c. depends upon the same principle

Evidence.

Co. Lit 169, 352. Gilb E. 81. 3 Co 23. 10 d 92. Nokes Co 24. 30.

3^d Privy in Law. is that which arises between Landlord & his tenant, and is sometimes called "Privy in Tenure". This exists only between the tenants by the custody & the heir at law. And is again between the heir at Law and Medow in down. This privy exists, though parties in Law become the same by operation of Law. Co. Lit 332, 3 East 353.

4th Privy in Representation. This exists a Matter & occurs between a Tenant & his Administrator. When the rule of Law operates both ways for & against or the same may be. Co. Lit 124.

I now come to the final general rule.

1. It is an established rule that the judgment of a Court of competent jurisdiction is binding upon the parties, ^{attorneys,} in question in conclusion upon the parties & privies to it, whether for or against them. If one party would not be bound by the judgment of a Court as to a particular point from litigating in that Court he would be litigating. 2 Willk 827. Co. E 668. 2 Vent 169. Nokes Co 34. t. 35.

When then final judgment has been given by a Court of proper jurisdiction that judgment can be called in question by the parties & privies only by some direct course of Law & that is by review, and that may be by writ of Error, and sometimes by a Bill in Equity, also, by Appeal, to a higher Court, or by Petition for a New Trial in this State has no by Co. Lit Nokes Co 35. 1 Str 170. 2 Str 170.

2. Such judgment cannot be reviewed in any collateral way or called in question in any manner, by any original action of A. King, an action of B. and review of B. B. cannot be

and the actor to demand what it had found of his. for if this were permitted one question might be tried "all" "impertinent". This ^{rule also} applied to "words of Abolitionists. Will. 38. 1 Day 130. 3d 30. 100s. & 75. 68.

This rule supposes the plea just to be have decided the right in question. for if a plea was has been defeated by a plea not going to the action. It does not prevent the Dff from commencing a new action for the same cause. and so this plea cannot the merits have been decided. But the right may be obtained by a disclaimer to the plaintiff. as an offer in fact, or by default. 3 Mch. 304 20th R 827. 3 Lord 346. 352-3. 3 Mch. 240. 6 Co 70.

The rule as regards an estoppel to the Dff means this must, be pleaded as being not only that supporting an similar action for the same cause. but precludes him from supporting any concurrent action for the same cause. Now perhaps is frequently concurrent with Trower. now in fact can he cannot bring Trower & if denied bring Trower. There is an other class of in which Trower & Trower & Trower are all concurrent, besides. now if he sues in either of these remedies it precludes him from bringing either of the others.

This Bar founded on an Estoppel of Trower Trower must generally be pleaded specially. But in the right action of assumpsit it may be given in Evidence under the gen. issue of "Non Assumpsit" 1 Esp. R 43. 4. 100s. 34 to 35.

^{Exception to the general rule} This rule of estoppel does not hold if the right claimed in the other action was not decided. The first action. But this is not the only class of cases. There is the ^{first} action is non concurrent as if in the first action he paid for work or a necessary allegation disclosed in the second action. The first action is no bar to the second action.

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and If the deft. is not even plead a second action for the same cause. The Plff. may traverse & deny the first. Example. P^r. Suppose the Plff. says, "Kerker for taking the P^r. & good nothing alleging "et cetera" he sues for want of this allegation now he may say, "Kerker." and the latter action will be supported. — ~~Example 2~~ Suppose the Plff. sues for the recovery of his goods, but states not the conversion, he is come to this in this case for want of a necessary allegation, But he may say, a new action, of trover.

The principle on which these rules are adopted is that in the former action the merits have ^{not} been decided, 2 Verbr 168, Bro G. 567-8, Ray. 472, 3 id 1-2, 2 id 318, Parker C. 37. The answer then does not answer the Plff. to be entitled to proceed against a new party not against him.

3. A Just^s for a Plff. in a former suit for the recovery of any debt or demand is conclusive of the justice of that debt or demand as to the Deft. & his heirs, for the law binds both ways, the Deft. is estopped what the 1st recovery was made by verdict, judgment, confession, default, & deposition. 7 C. 268, Bro C. 31 232, 1 Day 170, Parker C. 34-5.

Then the Deft. in such a case cannot in the second action traverse back the money lent and the former judgment is binding on any action whatever now the defendant cannot demand acting but a total acquittal. He cannot be maintained on an action for fraud vis the Plff. in obtaining the former judgment. The law will not allow a former judgment regularly made, to be impeached by any subsequent action. It is better that the Deft. should rather insist upon that than that the Pl. should not a procedure that would tend litigation endless, Parker C. 35, 68, 75, 1 Day 130, 3 id 30, 7 C. 269, 24 Bk 114.

4. If a party is being sued on a debt or demand says it "pendente lite" and at the same time denying that there is any legal claim against him, so that

he will not recover it back. Yet for all this he cannot
 recover it back, and Hargrave agreed a reason was not to be
 told to me, what was "That the debt is deemed being
 paid in the course of legal proceedings, and that the party
 paid the money in consequence of the suit, and
 therefore operates as an estoppel." 1 Esp. R. 84, 29, 216 570, 10 L. 35.

The truth is that this rule has nothing to do
 with the principle of an estoppel. Tho. the rule is correct,
 if the debt had been it without suit, he could not recover
 it back, & the reason is that he paid it voluntarily, and
 the maxim is, "volenti non fit injuria" If a man will
 voluntarily pay a demand without objection at all, he
 can never recover it back.

5. I have observed that where a recovery has been
 had in a Court of competent Jurisdiction, the other party cannot
 commence another action to recover it back. I now refer
 this rule for the purpose of remarking upon the Case
 of "Moses & Macfarlane v Barr. 1009."

This case has often
 been commented upon and involved a great deal of legal
 discussion. The Case was this. A Mr. B. a Municipal
 Crier in the City of London, B the deft. received written
 evidence of the payment of the debt. But the Plff denied the
 debt in the Ct. The written evidence notwithstanding, B
 brought an action in the Ct. of K. B. to recover back the money
 paid in the Court of the Municipal Court, & the K. B. ordered
 a recovery back. As the case now stands it would militate
 against the established rule paid down. But there was
 this ingredient in that case that must alter it materially.
 Sir Mansfield stated that the Municipal Ct. to try the
 issue of payment was incompetent, that it was incompetent to

try the defense of the deft. and if this is the case it does not militate against the rule laid down in the gen. rule, as I have laid it down. It appears that the Court has considered this question. 2 H. Blk. 414, 7 T. R. 209, Peck's Ex'dem 35.

6. If the PM has laid proof for only a part of his demand when he attempted to prove the whole & recover, his plea of non. recovery, the remainder, & suppose it be a part of the debt consisting of several items & recover some part of these items, or a part of them, & attempt to prove the whole, the first judgment is a bar to a second action for those items, but if he did not pretend an endeavor to recover any for a part and offered no proof as to the remainder's items, the first judgment is not a bar to a second recovery for the other items. 6 T. R. 607, 1 Esp. R. 401. Peck's Ex. 35-6.

7. But in the application of the gen. rule, there is in one respect a diversity between real & personal actions. All personal actions ^{are} of equal degree have a bar, viz. one personal action is a bar to any other personal action for the same cause. If the PM is laid in the writ when the debt and there are several, and fails to recover the whole for the same cause, the first judgment is a bar to the latter action.

8. In real actions there are various degrees, some species of them being higher than others, and all of a higher species, than personal actions.

Hence a judgment in a personal action is not a bar to a subsequent real action. The both relate to the same

subject matter. A *Magt* in the *M* is *Thompson* "quere *clara*
Gent" is no law. as the *M* is an *ulterior* ^{real} action for the
 recovery of the *pen* *land*, here the cause of action is not the *pen* *land*.

4. There is a *just* in *one* *species* of action a *bar*
 to actions of higher species 8 Co. 7. + Bow 115. Hi. *Madis*. *Deu*.
Peck Co. 367. 3 *East*. 258-9.

This rule is not *absolute*, the cause
 of this distinction is, that the cause of action is never the *same*
 they cannot be the *same*.

10. If a *M* is *void* in a *low* action
 it does not bar him from suing in a higher action.

But in every species of action the record
 is *good* as it respects the immediate subject matter, then
 in *ipso*, is *conclusive* in *any* future action whatever, because
 the *fact* *not* *has* decided the very *essence* *question* of *the*
existence.

Therefore if any *plea* *is* *distinctly* *put* in
ipso & found *in* a *personal* action, as *Guthrie* is *replevin*.
 The *verdict* *finds* *whether* *fact* *is* *in* *ipso* or *not*
 as the *fact* is *not* *conclusive* or *to* *that* *fact* or
 to the *point* & *principle* & *presents* as *binding* of *that*
fact in *any* *kind* of action whatever.

Thus in *Guthrie* the
M *quere* *clara* *alleging* the *color* & the *Def*. *pleaded* *that*
J.S. *did* *not* *in* *fee* and he *advised* *the* *law* *to* *him* *the* *Def*.
 The *M* *traverses* *that* *he* *J.S.* *did* *not* *in* *fee*, and it is
 found *that* *J.S.* *did* *not* *in* *fee*. This *verdict* *finds* in
 this *personal* action is *conclusive* as to the *Def* & his *principle* in
 any *ulterior* *real* action. 3 *East* 346. 354-5. 358. 366.

In a work on *Evidence* by *Just* *the* *case* in *East*
 of *Outen* vs *Meredith*. is *highly* *recommended* and *is* *very* *valuable*. *Just* *Evid* 11-12.

The *Case* of *Outen* vs *Meredith* is the *leading* *case* —

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So Bellamy in giving his opinion cited the authorities as the rule and then this for it and from this possibly by a positive view of the case misinterpreted its true import.

It is said in the Books, That to show a record of a former case is evidence of a fact in a subsequent suit that the same material point or legal point has been decided in favor of a party in the former suit.

It is when a party having been lost in a former action contracts a loss & afterwards sues for the same cause true or false.

II. It must appear from the inspection of the two records that the subject-matter was made in the former suit a legal point in favor of the party's action. 1 Bulst. 1643. Moore. 133, 2 John 24.

This rule is incorrectly expressed in this respect in the nature ^{of things}, that the cause of action should appear, not from the comparison of the two records, to be the same, all that can appear is that the cause of action is similar. This rule is as far from being true that it is useless to make an argument that the cause of action is the same. See Com. 25. Hutton. 81. 3 Lev. 125. 4 Burr 117.

A loss an action for assault & battery as B. alleged to have been committed on the 15th Sept. 1824, & B. promises. Against Briggs & an action of ass't & battery as B. describing the cause of action precisely as before, on the same day, with the same instrument. &c. Here B. to take advantage of the prior action for the former cause with & this must distinctly aver that the prior action was for the same matter, cause & thing. It must aver.

The true rule is. Whether a given point or fact or legal matter of the same nature was in issue in the former suit, must appear from the former record. But whether that previous point was a legal matter was the same is matter of argument.

and must be found "conclusive" and cannot appear for a comparison of the records. Suppose an action on a note is lost and decided, afterwards a second action is brought upon a note, bearing the same date as the first, and in every respect the same, it can be said, strictly consistent of the record, they appear to be the same, they are the same. This cannot be, for the date and the same term, yet they may be distinguished by way of identifying. There is another question in another case. If it appears from the first record that the same evidence that would support the second record would have supported the first, it is per se per se evidence that the cause of action in the first is the same as the cause of action in the second.

3 Mch 308. 2 Johns R. 30.

I should say ^{then} that the latter will thus. That to make out a case in the second action it must appear independently from the record that the same evidence would support both records.

12. A prior judgment between the same parties is conclusive, as well when the point decided by it comes afterwards ^{independently} in question, as well as when it follows the gist of the action. See 10 T. R. 233 244.

To show, in an action of policy of insurance, that the ship was wholly and absolutely a burnt decision of a Court of Admiralty, is good evidence and conclusive in the action between the insured and insurers, for the loss of the ship.

8 Y. R. 186, 434. 2 East. 268. 4 Y. R. 523.

Dor. 554. 7 East R. 244.

13. But a judgment is no evidence of any fact or right when it comes in question, collaterally in the following suit & indirectly. To be conclusive it must be directly (and only) decided in the former suit.

Suppose a case B. in dispute an claim in the law of Sea & T. a question of the Extension of it is put down

Evidence,

Where the illegitimacy of A. now in a subsequent action of Ejectment between the same parties, this prior party relation to the illegitimacy may be made C.

14. And the Proof of a Ct. when a party only incidentally cognizant by that Ct. is no evidence in a subsequent action between the same parties, In General. The question of neutrality is only incidentally cognizant by Cts. of Exchequer. The question (a. & b. & c.) may arise afterwards in an action on the policy. And in a second action on the policy. The Proof of the Exchequer Ct. relation to the neutrality is no evidence.

15. The Proof in a prior action is never conclusive as to any point or issue whether what is merely ^{inferable} by argument from the former proof. Because it is not a point found or decided. Hence if A. has said: B. on a Bond of a given date. and afterwards "an" a Bond given on the same day is of the same date. And B. & B. plead "insolvency" here A. cannot produce the former record to show that B. was not an insolvency then & did not plead his insolvency. Peckham 43. 76.

16. A Prior Proof upon a finding on the evidence is not conclusive. it is strictly no evidence in any subsequent cause unless the cause of action is the same. In both cases, even though the title, & yet a transaction out of which the two actions arise is the same. Hence a Prior Proof in an action for a nuisance ^{on the ground} is not conclusive that a subsequent action for the same nuisance.

17. A Prior Proof on the ground for a disturbance is not conclusive to a subsequent action for a continued disturbance. - But 100. 232. 3 East 365. Peckham 37. 8.

It must also be shown the Verdict of the jury in the 1st action is evidence in the second action. It is not conclusive for a verdict is the evidence when it is not conclusive.

Evidence,

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Jill's 24.30. But 11.232. The 308. 1151. Castle 79. 5000 386.

I.E. is a new action for the same misfeasance dis-
balance the debt may produce the result of a judgment
to show a false account. But I have shown that this prin-
ciple is not conclusive.

¶ The same rule holds as to success-
ful action for ejectment for the recovery of the same land.
The action of ejectment is well concluded, and is in
this respect "res judicata" in all other actions a judgment
in one action is a bar to any subsequent similar action for
the same cause. Peckham Co. 37 8. Remington's 12

I have never in my life seen any reason why
a judgment in an action of Ejectment should not be conclusive. No
reason can be found in any of the Books

I take the same to be this. The Ejectment is a
species of fiction, in every new action he may make a new
case, a new cause of ejectment. The Plaintiff may be different
the debt may differ. The lease differs, &c. he may lay the ejectment
when & where he pleases. But in one ^{as} ejectment, a judgment is conclusive
for we have no fictions. It is as conclusive in any other action.

So that the position in this State, as to the action of Eject-
ment differs materially from the English rule.

16 I have shown that a prior judgment can be no bar to
a subsequent action unless the subsequent action is for the same
cause —

But if the title to any part of the land in
had been distinctly put in issue and found in the former suit
the rule is finding that fact is conclusive in a second
action the. The two causes of action are not the same

Evidence,

If A was indicted a homicide at Law of John Steer, and the fact of A being here is distinctly found either for or against his legitimacy. This fact being distinctly found by verdict may be afterwards pleaded either for or against him as it was formerly decided, in a subsequent action. 3 East 346. 354. 5. 358. 366. ^{Buttress & All O'Leary} ~~Buttress & O'Leary~~ is the principal leading case. And this rule holds though the cause of action is now the same.

"Difference between Judgment & Verdict."

There is a very essential rule to be observed with respect to the effect of a verdict & judgment in relation to the parties.

1. A verdict found upon any title or right, is the foundation of law deciding the rights.

2. A verdict is more evidence of matters of fact in question. Thus in many cases a verdict may be pleaded by way of evidence and the consideration of the facts which it purports to find.

3. The office of a verdict then is to prove some matter of fact, whether pleaded a question in law. That of a Judge is not to ascertain any fact, but to show the rights determined by it, upon facts admitted either by verdict or otherwise. It has been usually the course to plead when available at all, as evidence in any action, is as better the parties & their evidence. ^{as with evidence in no case.} ~~as with evidence in no case.~~ 1 Le 235. Peckham Co 34, 35, 37. 4 Inst. 756. 761. 1 Day. 170.

4. And this rule holds as well when the party pleads a question in law as when the question is one of fact. It is a question in law, as when pleaded. Peckham Co. 34, 6.

5. A verdict found may indeed in some cases be given in evidence as to the effect. This however is not the rule in fact cases it can never be conclusive.

6. Verdict may many times be given in cases when they are not conclusive evidence between the parties to them, though a true Judge between the parties is always conclusive.

7. In many cases verdict may be rendered by way of acquittal, so that verdicts may then be either conclusive or evidence not conclusive between the parties to them. See *Butt v. D.* 232, 300, 365, 1 *Rep. B.* 43, *Call's* 37, *Gill* 29, 35.

8. But in all cases when the verdict is evidence but not conclusive between the parties the cause of action in the two cases is not the same, for if the immediate cause of action were the same in both cases the first judgment would be conclusive of the second action so that there would be no need of a second trial or order of the Judge. *Gill* 29, *Butt v. D.* 232.

9. I have observed that when the cause of action are the same the Judge is conclusive, but when the cause is not the same the verdict may be evidence, that, our concern is the cases are those where the cause of action is not the same in both cases, the both depend upon the same title or same state of facts, thus if two pieces of land are held by one & the same title, a verdict in an action of Ejectment ^{or a judgment} as to one piece may be given in evidence in a subsequent action between the same parties for the other piece, then the cause of action is not the same in both cases. Yet both depend upon the same title or state of facts, and proved by the same evidence.

The reason why the verdict may be given in evidence is because the same title & same state of facts concern the questions. *Gill* 29, 30, 25, *And* 308, 1157, *Call's* 78, 181, *Willard* 386, *2d* 142.

Evidence

Herein the case is supposed, if the subject matter were purely the same the verdict would not be needed, for the right would be conclusive, except in those rare cases of Equity?

Suppose it were B for a nuisance & disturbance and C comes & it afterwards turns B for a reputation & continues with the nuisance & disturbance. Here the verdict is good evidence of the subsequent action, yet it is not conclusive, the the cause of action is the same. The 1st form tells a state of facts ^{in the same} ^{some} ^{which} the party contests,

3 East 305. Per L. 378.

10 The rule is the same in the case of subsequent ejectments. West for the same land. 10 Mod. 1. Per L. 378. Summ. & L. 12. Bul. N. P. 232. Gilb. L. 35.

11. A plea of abatement is good if it has exactly the same effect when the cause of action is the same in both facts, as when the cause of action is not the same, but depends upon the same title & same state of facts. This observation applies only to the single action ejectment.

12. A short time ago I observed that judgments are now offered with by a verdict or judgment in another action. If they might be thus offered. The two parties by collusion might effect an agreement. So they cannot take advantage of the record of a plea of action between other parties. "et inter alios actus" Gilb. 33-5. Per L. 38. Bull. 141. Bul. N. P. 232.

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Things in gen may cannot be effected by joint acts & joint.

13. But this rule is not universal. There are very peculiar cases in which a stranger is entitled to the benefit of a plea joint and when the joint act is in breach of law.

Thus one who is going to an estate ^{in which his son} may give the verdict against the unsuccessful party, whereas the unsuccessful party could not if the verdict had gone in favor of him. He could not give it in evidence as the thing to the party is given. For the reason I will refer you to the Books. & the reason is not satisfactory to me. The rule is sublimed of the principle of necessity. it is said that if it had been given against the party it would effect the thing &c. &c. &c. which does not satisfy me.

14. But the rule that a joint act is in evidence except where parties & joint is subject to several modifications and exceptions —

Thus when one person A. sues for his own benefit the name of another is B. The verdict may be entered for or against A. The rule concerning evidence ^{this rule holds} however he be his own beneficiary or the joint. He had every advantage as a party, but as he was not the party in record. The verdict cannot be entered because the verdict is not an award he was not an estate. This is the case of several similar questions, but for the same kind by one & the same law. who brings suit as two different cases, here the verdict may be entered in evidence & here not it cannot be entered. Pen Co 40. Gil 35. Bol 232.

Suppose the same principle a verdict is taken w. A. who is servant of D. S. is entered in a judgment w. B. as the servant of D. S. for a conspiracy of the same purpose.

9. The sentences of Courts, when proceedings are in rem or of Ct of Admiralty are conclusive evidence for or against all parties or persons who claim that are not parties to the proceedings. The Ct of Admiralty holds is given to all members to appear & defend, and if they having notice make an appearance an ever after concluded. It is a Court which all may appear and defend. — 8 T.R. 196, 434, 762, 523, 681. 2 East. 268. 2 B.R. 97. 1174. 5 T.R. 255. Marsh. on Tr. 288.

There is much reason to be technical, & to state in a Ct of Admiralty does not like a Com. Law Ct merely decide the rights of the parties & the proceedings, leaving the facts to be ascertained hereafter but the sentence in the Ct of Admiralty settles itself, transferring the title directly, without any thing more done.

The truth then is that the sentence of this Ct of Admiralty is in the nature of a common assize. It is given for and against all persons, As, a conveyance of land from A the Plaintiff to B the Defendant. It is like a title acquit under an execution, which is valid against all persons, whenever the sentence of a Ct of Admiralty comes incidentally in question in Ct of Com Law or Chancery, the Admiralty sentence is conclusive upon every one of the parties to the suit. There is no need of that word "incidentally" It is apt to confuse students. The truth is that whenever any fact or matter decided by a Ct of Admiralty is a proper jurisdiction comes before Ct of Law or Chancery, it must necessarily come in question incidentally.

The Double given yesterday of a "neutral ship & sentence of a Ct of Admiralty" is applicable here. When the decision of the Ct of Admiralty is conclusive between the underwriters & the party on the policy of insurance,

Evidence

20th The same rule holds in the Probate of Ch. Grants the probate of wills or letters of administration. Here this sentence is enclosed upon all papers, afterwards in any case whatever in Ct. of Law or Equity, or whether it is in Law or Equity, whether the will is genuine or not. And it is said this rule not only holds in civil cases but in criminal cases. "as in the case of the burning of a will." - But this is totally denied. See 481, 703. And 762, 761. And see also 103. 12 de Chols 429, where the Ct. held that in an indictment for forgery that the Probate was not enclosed indeed. But the case then said does not militate with the rule here. It is stated that the bond to the living after the will was proved, under circumstances rendered the Probate sentence utterly void. This does not militate against the general principle 3, 116, 125.

And see also 109, 438, The Court held that in an indictment for forgery the Probate was not enclosed, but here the was found proved in obtaining the probate, which rendered the sentence void and therefore does not militate against the general principle, 109, 438, 50-61.

21st In the year 1802 on a similar question, and a regular Probate produced. Lord Ellenborough, speaking in ^{Phillips} Gilpin, that the Probate was not enclosed Phil. 2247

If this authority is considered to be law, the rule is, that the sentence of the Ct. of Probate is conclusive as to all civil cases. The rule is criminal cases. But Lord Ellenborough is applied to this case in Thayer 411, 412.

22nd Some Cases. The Probate of a will is conclusive evidence in an action at Law concerning real or personal property. If death is first got as fact to B. Lord Mansfield in 1760. The Probate of 188 will be conclusive on this point. The Ct. assumed evidence in cases where the will was forged.

23. And in general the sentence of an ecclesiastical court upon matrimonial questions is conclusive upon the question even incidentally in a court of Law, and it need not even now arise otherwise than incidentally. And the sentence is as conclusive between the parties, as before 1640. 46. 29, 7 & 41. Coar. 225. Foster 901

So also in an action for crim. con. a prior sentence as to the validity of the marriage is conclusive as to the Plaintiff. See 90. Peck 77. n. Stark 750. 763.

It is an action by a creditor of a wife supposed, i.e. supposed wife for a debt contracted while she is a partner in the marriage is conclusive as to the creditor. Peck 78. n. The principle upon which this rule depends is that, as a sentence of an Ecclesiastical Court is in the nature of a proceeding in law, it executes itself.

24. But in all sentences of Courts of Ecclesiastical Courts Ecclesiastical and all judgments of Courts of Law and decrees of Ch. may be set aside on motion if made was granted on the Court's motion. There is a course which will vitiate the most solemn proceedings and stand there granted may be pleaded as a plea of judgment or sentence. But that a crime was mistaken is no course. in such case the judgment must stand until reversed by due course of Law; 2 De 246. Stark 922 Peck 76-8. n. And must stand until reversed in a collateral suit.

25. There is another class of cases in which the evidence of a Prior may be evidence either for or against a stranger. I should express the rule thus.

Evidence

1. When a party in a plea puts forward a part or the whole of the cause of action or ground of defence. The burden of the follow-up suit may be given in evidence for or against the stranger to the first suit.

2. This holds when one has been compelled to pay money for another as if a surety to B has been compelled to pay the debt of his principal. This depends on various distinctions from those which govern the other exceptions to the general rule. Here the record is not introduced to establish any fact appearing in it, nor to prove the debt, nor the record purports to establish, neither is it intended nor can it be shown his liability to pay for B, or his security. It is introduced for the single purpose of proving that a certain amount was received of him. It is in fact a part of the evidence.

3. In this record the defendant may plead any defence except, that "No money been lent to the Plaintiff, and the Plaintiff must prove his indebtedness or his contribution of this first the record is not evidence."

4. If a third party has been induced to the payment of his debt, it remains over to the plaintiff he must show a party had no part in the appearance of the cause of action. To be an action of his servant, where he has been suspected for his default. As if an agent is an action of the principal where he has been suspected in the case, Page 238

5. As an obvious case. A sells land to B, with covenant of seisin & Warranty. B is ejected by C, who claims under a better title, in an action by B vs. C, or the Warranty, the record between him & C is evidence of his ejection and supports the allegations of

breach of covenants. Hence if B. sues in A. to defend, the record is conclusive evidence when in a party. In the Eng. & Exchequer there is no reversing. This is with us. Feb. 28. Feb 22, 1806. 396. Peck, 39. —

6. When it is a defence E. S. A & B. sue C. & bring an action vs. A. & recover damages. he then brings an action for the same against B. Then the record of the first judgment A. will be a good defence to B. for the Pff could have but one judgment for his wrong. So in an action of debt, or an of two joint (tenants) and several debtors vs. A & B. A recovery as to A is a good defence to an action (for) vs. B. subsequently. However in this as in all actions on contract the judgment in the first action must have been satisfied else it is no bar. But it is different in actions sounding in tort. in such case a verdict on judgment is a conclusion but to a second suit. tho it has never been satisfied. This is subsequent rule for they are suing for Jan 73.

7. In those cases when a party to a suit dies, his title from a judgment in a former action passes to a heir as a stranger to the present suit. he may gain the judgment in evidence as his adversary. As. 16. of Mass. B. in exchequer claiming under execution title. He may gain in evidence the record of the judgment on which the execution issued. This seems power that he has the title of the party vs whom his recovery was had not that the title is good. The principle of this is that the judgment and execution is in the nature of a common appearance.

Evidence. Records in prior criminal cases

1. Whether a verdict in a prior criminal case can be evidence of the fact found by it in a subsequent civil suit is a question said by legal writers not to be clearly settled. As if it has been decided and considered of burning the house of B., can the evidence in this prosecution be evidence in a civil suit, viz. by B. v. A. for an action for damages sustained by him. 10 B. 225. 4 B. 57, n. 58. 1 Camp 9. 15. Phil. 57. 2 Ark 418. 146-148. m. Bal 245.

But according to the principles which govern the law of evidence, clearly it cannot be evidence for that B. was no party to the first suit, and this should follow the general rule that a prior judgment can be evidence only as between parties & their privies, unless some strong reason appears to constitute it an exception. But there is a strong reason as it being an exception. But surely in such cases the party injured is a witness in the prosecution, and if the record could be admitted B. could falsify what he pleads as evidence.

That the party injured will be a witness there is a single exception in the case of *Golger v. B.* this exception is not founded upon principle supported by weight of precedent. I therefore think that the record cannot be evidence and is so ruled by the weight of authorities cited.

2. But a record of a prior criminal a civil suit is good evidence to show a fact of the legal question in a subsequent civil suit as that such a prior prosecution

had been tried and just rendered, and this is the subsequent suit is against the trustee. As in an action for payment, the record of the suit is when the jury was charged, is evidence in the subsequent proceeding, Bul 243 Peak 48.

3. A verdict is no evidence of a fact found, by it until final judgment has been rendered. And this has led to the conclusion that it is the just stuff that is evidence of the matter of fact found by the verdict, and has caused much confusion to exist between verdicts & judgments for till final judgment it is not known whether the verdict was stand or not. Sta 161. Bul 243. Peak 48. 50. 1 Phil 292.

4. But this rule does not hold when the purpose for which a verdict is offered in evidence to prove that such a trial had been had. Then there is no necessity for the verdict of any judgment, it is enough to produce the process i.e. the proceedings preceding the final judgment. In such case it is immaterial whether judgment has been rendered or not, for it is only to prove that such a trial had been had, but not to prove any matter of fact found by it Bul 243. Peak (250.) 50.

5. When a verdict has been rendered on an issue made out of Chancery, a decree upon it is conclusive as a judgment and verdict is in a Court of law, either being necessary to render the verdict a dispute arises. Bul 234. Phil 292. Peak 50.

The acts and proceedings of English and local of the Supreme Ct of the U.S. are proved in each state as her own native Law and proceedings of her own

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Q^d As they are binding throughout the whole union they constitute a part of the laws of each state.

By the Constitution of the laws of the U. S. Judges of the C^t of arising States are of the same solemnity in all other States as her own judges, and of as high and solemn a nature. This was ever disputed, but now finally settled 2 Dal. 382. 1 Whar. 426, 5 ib 37-8. 8 ib 173. 86 1 Mass. 401 1 Dal 188. 219, determined in 7 Cranch 481. 3 Wheat. 234.

Public writings not Records.

1. These, in fact, of the nature of records, inasmuch as they are documents kept at a given place by public authority and open to the inspection of all. They are the highest species of evidence, and are accepted. 1 Gall. 47. Bul 214. Peck 51.

2. They are in general preserved by record, and are produced, but may be proved by other copies. Bul 234-5. 1 ib 478. 2 ib 189. 1 Cranch 17. 590. Peck 11 53-5. Peck 52. Bul 235.

Public writings, are of five kinds.

1st The Journals of the Legislature, i.e. the history of its proceedings, are of a public nature, too, inasmuch as they are necessarily examined and shown to the public. Peck 58.

2^d A new legislative proceeding passed as the continuation of some former proceeding is no evidence of the fact recorded. These resolutions are common.

As for this being to include that such a declaration shall be a libel or that such a declaration shall be a libel if such declaration would be evidence of the fact stated the signature would have it in their power to falsify it in any way.

2d. Memorials of proceedings in Chy. These are not used as they are not proceedings in Justice according to the law and usage. They are of the same solemnity with records and have the same effect. Gilb. 45. Bul. 235. Perk. 50.1.

But it cannot be denied that such a declaration is a libel as a writ of error will lie on a declaration in Chy. But by the Eng. Com. Law it would be only on a writ.

2. Whether a Bill in Chy is evidence of the fact stated in it against the party making it has been a question. But it is now settled that it is evidence of the high fact only that such a Bill was filed, and not of any of the facts contained in it. except of such facts as may be proved by themselves.

In the statement in a Bill an allegation of the count to commit an offence and also the words under oath, 11th. 2. 3. 159. Perk. 12. The declaration is 22d. Bul. 235.

3. But an answer in Chy is evidence of the party making it and is evidence of all the facts stated in it for it is made under oath, and is regarded as a confession and one of the most solemn matters. 2d. Bul. 235. Gilb. 50. Gilb. 23. 2d. 23. Perk. 54.

But the next answer is regarded as a confession only and is not evidence of all the facts stated in it, unless a confession is made in it, hence a confession.

made for the purpose by the guardian in an answer to a Bill in Chy. is no evidence against an infant in a Chancery suit, to the confession of a trustee, &c. but certainly true. See the Confession in the 8th case. That of the House and in the Year's case. That of the Estate of a deceased. Lenth. 19. Dec 237. 3. 10 & 25. 9. 2 Dec. 72. Book 2. 54.

4. ^{the} party making the answer is concerned by ^{the} party's confession, made in it. That all arguments ^{to} be called to any argument which may be made in his favour for the whole of the answer must be given in evidence or more. But the arguments in favour of the party making the answer cannot conclude the opposite party, but may rebut them, & dispute them as he may any other point provided by the law. 2 Dec 194. 253. Elix 50. Book 55. 57.

5. Can one witness a witness part of an answer in Chy. may be used to prove the whole i.e. to prove that a witness is interested in the event of the suit and this whether the answer was given by the witness or the party to the suit. Dec 258. Book 57.

Can a plaintiff's answer by one of the parties in a Chancery suit be evidence to him in a Chancery suit similar to an answer in Chy. Book 57-8.

6. Can a defendant's answer by one of the parties in a Chancery suit be evidence to him in a Chancery suit similar to an answer in Chy. Book 57-8. 1 Dec 53. 413. Lenth 311. 734. 875.

236.

7. Depositions in a former suit are evidence between the same parties and the parties provided the witness is

dead a cannot be produced in Ct. if otherwise he would be produced for his testimony his voice is the best. The deposition is but secondary, a deposition is evidence made by a third person to the Court. an affidavit is made by one of the parties, which is evidence as a confession and can only be produced by his adversary. But a deposition may be produced by either party. See a. to a. p. - outis side. Talk 278. 281-6. 1st 2 445. 3rd 239. 2nd 58-9 1st 2 14. 283-5-7.

8. that a former deposition given by one who is a witness, now in Ct. in a case may be introduced for the purpose of contradicting his subsequent testimony but it is introduced only as any other declaration would be, made by him. they present no evidence of the facts stated, but are produced merely to invalidate his testimony & this is all the use of it the Court can make. Peak 29. 30.

9. Whether the deposition of a witness, admitted at the time of making but becomes so at the time of trial by operation of Law can be admitted, is question⁴²² vexata. Peak 135 Talk 186. 1st 101 2nd 176 3rd 177. 2nd 420 2nd 15. 1st 177. 288-9.

It is my opinion that it may be admitted.

Depositions to perpetuate testimony called depositions de bene esse may be taken under the direction of Ct. on a bill for that purpose in cases where the witness is a resident abroad or some being the evidence, or is in danger of speedy death, or is aged and infirm that
This is often the case before any suit commenced. to provide is

a probable hint. This deposition is to be used according
 for it cannot be used except in the case of the party
 mentioning it or dying. So if he is in the courtroom
 can be produced he must be. Bal 240, Felt 69, Pak 60-1, 2, 3
 Felt 45, 3 B 2 383

11 A Deposition is regularly an evidence in a court.
 Case Case. For this purpose it is open to the party who
 again, the parties are to object to it.

12 Depositions are admissible in this State by the
 Law and so in the federal courts of the U.S. by act of
 congress.

13. Depositions are evidence. Regu-
 larly, before the parties & previous to the trial, and
 then they are used. Bal 239, Felt 61, 1st 48, 3rd 415,
 501-2, 524.

14 A Justice having an interest in the subject
 brings an action for the certificate. It has been
 a question whether he could testify in it. For & fa-
 vorable view. The latter decision appears to be
 that he cannot.

15. A witness may introduce evidence
 of a 3rd of Chgo. in evidence. Proof of the facts of the
 fact must be produced. As to the facts in evidence
 before the Bill must be produced, As to the facts in evidence
 the evidence the parties must be produced. It is
 enough to show that the case was not permanent in
 legal proceedings. Felt 55-6 Pak 60.

But if it can be made to appear that the Bill
 was not a victory it may be proved that the case
 was not a victory. A witness is not evidence, & can
 be used. Bal 257, Bal 228, Felt 211, Felt 222.

6. A decree in Ch. is evidence whenever a judge at law would be, and the same rules hold which apply to the awards of the latter apply to the former. Thus a decree is evidence only between the parties to it & their privies. *Georg. 222, Mol 232, Peake 38-40, 64, 68.*

17. The Decisions of Admiralty Courts and the proceedings in Probate Ct are not records, but are evidence of the same nature and authority as proceedings in Ch. and are of the same solemnity or weight. *See what are cases of record, Quilby, 4 T.R. 238, 3 id. 125, 1 Br 50, 2 M. & C. 1, and 2 M.* Upon these a writ of error will not lie.

18. It is competent however for the opposite party to show that the recd of the Ct. was forged, or that the whole proceeding, now so, and this is the case in *deeds* & *deeds* is called. Then the party who has not contradicted the return does not read, but he is bound to show that there is no such record, and a decree. *Hay 405, Peake 68.*

19. Such entries are proved by copies in the public proceedings. *Id. 1, 2, 3 T.R. 154, Gray 572.*

20. Judgments of Foreign Courts are evidence here either conclusive or prima facie only as the case may be, of the rights which it purports to determine, a right which it purports to find. But as to judgments of Foreign municipal courts, i.e. Courts acting within the local limits of a Foreign Country, this doctrine does not extend.

If the party claiming the benefit of a Foreign judgment applies to our Courts to enforce the judgment as an action of Debt, the Judge is but prima facie evidence of his claim and the Court is at liberty to examine into

the whole merits of the claim. for when a ~~plea~~ brings such an action he voluntarily submits the right to the jurisdiction and investigation of our Ct and the Ct will investigate the right by enquiring into laws of the country where it was decided and see whether it is in conformity to the laws of that country. The onus probandi here lies on the Def^t. But when a Foreign Judgt is used in a defence in our Courts, it is as conclusive as if concluded by our own experts. As if A in Eng^d beat on or B in (in) C. R. in Eng^d and afterwards being an action vs B in our Cts here, that just in form of B. in Eng^d is a conclusive defence. for if it is an estoppel in Eng^d. it must be when for here the def^t does not submit himself to the jurisdiction of our Court, as the P^l when he brings an action on a Foreign Judgt and the proceedings are "in invitum" 2 Hen Blk 410. Peck 70. Darg^t.

1st A Foreign Judgt may be proved by ^{an} Exemplification under the great seal, 9 Mod 66. 2 Comth Rep. 85. Peck 70. or 2^d it may be proved by a sworn copy i.e. a copy examined by a witness and by him sworn to be a true copy 2 Branch. 87. 2 Comth R. 85. 5 East 473. Phil Ev. 301. n.

or 3^d It may be proved by the attestation of the proper officers, with the seal of the Court. There is no need of an attestation under the great seal of the nation for the attestation is sufficient evidence and does not entitle to have the seal.

The Seal of a Foreign Municipality or Court is not presumed to be known by Cts of other Countries and of course is proved like any other matter of fact. The great seal is judicially known by the Cts of every Country. otherwise there could be no national intercourse. East. 221. Phill 20. Phil 301. Peck 72-3.

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1st Foreign Stat. or acts, or ordinances, may be proved by copies under the great seal, or by sworn copies, 2 Branch. 187.

1st We have a Stat. Law of 1808, which is now in force, requiring the State Courts of the different States in the Union to have sworn that they are proved by the attestation of a Secretary of the State, where Statute, are to be proved.

But that statute has the printed Statutes of the several States in the Union transmitted by the several executives or legislators to the Governor of this State deposited in him in the office of the Secretary of State, and stamped by him under the seal of the State, shall be evidence of such foreign Stat.

And that day it is a general act of courtesy in all the States to transmit a copy to every other State in the Union its Statute Laws.

22nd. The unwritten Laws or customs of any Foreign Country may be proved it is said by the testimony of intelligent respectable foreign residents of such foreign country. This is the rule admitted in N. York. In principle I should think no testimony of such nature could be admitted from such persons unless they were professional gentlemen. The rule is settled in N. York on the ground of convenience, as being the most expedient. 1 Johns 385. 384. 17 Wm 434. 3 Edw 16. 55. Peck 75. n.

A Rule has been adopted in the Supreme Ct of the U States, as to the Proof of the local unwritten Laws of the different States, and this rule is adopted by all N. England & N York to my knowledge.

The Rule is to admit professional men of the State the local customs and laws of which are in question, to certify without oath to the Courts of the

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magnifying what their own written laws & customs are. The usual way is for the Court in which the question is pending to find to some extent charges of such facts to have been contrary to the fact, and it is often done by the Council to the prejudice of the fact.

23. The sentence of a Foreign City of Admiralty on subjects within their jurisdiction is conclusive evidence of the fact or whatever it purports to find, throughout the civilized world. All Courts of Admiralty are created by the Law of Nations and governed by the same. There is a part of the laws of every civilized state, the decisions of their Courts are decisions of a Court acting under one law, & 2 H. 192, 230, 240 353, Peck.

24. And if such Court states the evidence upon which it is found the fact we could then enquire into the question whether the fact was well found by the evidence stated, but the adjudication in this case is conclusive only of the fact found, but not of the facts stated as the evidence from which the fact stated by the Court was found.

25. As: If the sentence states the facts & evidence then that the ship was found to have been at an enemy's port & therefore she is not neutral. This sentence is conclusive of the fact of her being at the enemy's port. But not of the fact that she stopped at an "enemy's port" for this fact is by way of recital only Peck 71. 4 H. 520 to 52, 208 & 8. Green Rep. 192, 230.

¶ The above two lectures I have copied from Mr. Wilson being at the time of their delivery at Hartford, sitting the student's records of Lea Haystack.

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6 If not a 2d question is raised as to whether or not a ship is neutral or not (any) ship is not neutral it is conclusive. As in a 2d of Admiralty a vessel that the ship is not neutral but belongs to one of the belligerent powers, is evident ~~of~~ the neutrality of that ship is any. *Ex of Justice* Park 413. Park 41. 414

27. If it appears from the face of the proceedings, that the condemnation of that ship was not for any breach of the law of nations but for a violation of municipal law, the sentence is void and is no evidence at all in any 2d of Justice. I think a condemnation of a ship for the late French alien & French decrees, is utterly void. Those decrees were violating municipal regulations, not those upon all land & foreign decrees, & the Law of Nations, 7 Y.B. 523. 810 434. 502. Park 415.

28. And yet if a French 2d of Admiralty had acted under those decrees without a ship's crew, should condemn a ship. The sentence is conclusive in other Courts, because then there is no room for objection. it must have effect.

29. *Admiralty* has any effect unless the 2d rendering it was regularly established according to the Law of Nations. When this principle is established during the time of Bona. a class of adults 2d. established during the time of Bona. part established in other Countries? etc. etc. a ship negated to be in any of no account, 8 Y.B. 268. 2. *Ex of Justice* Park 473. *Peckham* Co. 72.

When proceedings in 2d of Admiralty are for seizure of a ship under the rule of the 6th article these proceedings throughout the world.

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Parker's L. 723.

30. To allow the seal of a Foreign State, Public Service, etc. and yet the claim is an absolute one. I for the ^{very} same reason the effect of such is established by the same of matter. In seal & attestation are the same evidence the same fact & verity's heart are present in all cases. It is a general fact certified by himself. Then when a decision is taken before a Public. to be used in Foreign States' collection that the matter is to be believed is good evidence. Book 74, under 86.

It is a fact that the the seal of a Foreign State must be proved here. But the fact of attestation of a Foreign Public will prove it & does prove it through the word.

31. From Copies of regular entries in the Books of the Executive Offices of Gov. an absolute evidence. The entries of the George Henry Comptroller, & an evidence of copies examined I see to be evidence. I

And the same rule holds as to entries in the Books of corporations, such as entries in 1 Books of Bonds, General Comptroller &c. 2. No. 475. The 93, 307. Dory 593. n. Book. Co. 80-1.

32. A Gazette published under the control of Gov. is good evidence of a common act of state or of an embargo. Blackade, also of Gov. regulated by Gov. & the Gov. is a general standard within which respect to the power of the Gov. is good evidence. 5 L.R. 436, B. 1. 1. 226. 2nd Nat. 474. Here we have no Public Service by the way.

Such a Gazette is good evidence of Gov. Proclamations & of any other public transaction which is as in the case of any other public transaction of Gov.

To the Books of a Public Session are evidence of the continuance of the session. 2 M.C. 106 475 Peab. Co. 79. 313/188.

34. The Log Book of a man of War is good evidence of the miles sailed and containing, i.e. the time of the sailing, & only facts which appear from the Log Book may be thus proved by the Log Book Peab. Co. 79.

35. But a protest by a ship's Captain is no evidence of a fact stated in it. It is no evidence in Chancery. It is usual for a ship's master who captures a vessel to make a protest stating the facts, & then to use it often important in policies of insurance, yet this protest is no evidence of the facts, but for one purpose such Protest is good and can only be used as evidence for the purpose of establishing the testimony of the person who made it, if the testimony should ever be called for. So that this Protest stands on the same footing of most evidence. And why the Protest should be so frequently made as they are, I cannot readily conceive, but without it, it would be a mistake to know it. 2 L.R. 2 490-491, 1 Day 86, 2 L.R. 66 March 20, 1866.

36. A General History is evidence of past facts of all of a Public nature as a part of the history, but it is no evidence of a fact of a Private nature. Thus, History is evidence of a custom of General kind. But if the question is whether the custom is or is not a fact, it is not evidence by authority in time past. I should suppose it would be good evidence. 1 L.R. 281, 12 L.R. 85, 11 L.R. 149, 10 L.R. 248, Peab. Co. 79. 83.

37. Jurors & Magistrates take by Authority of Law as evidence, the testimony of individuals, the individuals are not bound to them.

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The history of actual groundwater, of the same
good evidence from better evidence of the same, as
the same evidence, p. 14. West. Hist. Book 84, Ben 146,
Book No. 182, 1770.

38. Public Register where there is a journal
of Law, a sworn copy of the same, as evidence of Births,
Marriages & Deaths. In this State, the Register is
evidence of Births & marriages & the evidence
of a Marriage - or Marriage that is conclusive evidence of
marriage when he has solemnized it.

39. Ancient Maps, the same, without
Public authority are evidence of Limitation, when they have
been used the papers and copies with the boundaries
established in the ancient surveying cases. Book 88,
Ld. King 134, 135, 136, Book No. 18.

40. As to the copy of an ancient Manuscript
the writing of a Public Manuscript, the same, that record
of the proceedings of the Court are open to all persons
for inspection who have entered in them. 1770, 279,
2 Jan 1242, Book No. 92.

41. Copies from the Books of Public Off-
ices are also admissible, unless Public Policy
requires their concealment. This exception will not
apply only to high executive officers of Govt. 1770, 306,
279, 616.

42. In the case of a person who is refused to
the same, applying who has a right to examine the same
and the office to furnish an inspection. See
evidence in evidence of the same. 104, 105, 1223, 1242, 1770,
279, 616 Book No. 15.

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The Book & Paper of a corporation are held to be evidence by all its members. That is a general letter to the Capt. and an officer member a letter to the individual members, an inspection of the book will be made by the Ct. It was formerly supposed that the Ct. will make an inspection before a stranger, but that is not law. ^{now} between a stranger & an individual member the Ct. will not do it. The stranger has no vote in any case. He cannot the Book or papers of a corporation or even then in inspection of the members papers.

8 Mo. 590. 3d 303. 5. 9. 1868.

3 Mo. 398. 1st Mo. 211. But, ^{the} Ct. of Equity may have power for a discretionary order the inspection of certain books or papers of a stranger, when the person presents a reasonable evidence to satisfy a specific demand either written documents, but the Ct. will not make an inspection of the books or papers unless it would add to the same person. The papers a note of an individual. 2 Mo. 621. 8 Mo. 592-3.

44. But in a strict prohibition in a corporation any of its members. No Ct. of justice can make an inspection of the Book. This can be done by no Court whatever. 2 Mo. 1210. 1 Mo. 289. 1 Mo. 16.

I have here writings of Paul's writings. I will now proceed to read of writings of a Person's letters -

The same ^{rule} holds when the party wishes to have a fact
shown a letter.

4. The State's case in this case may be
given to the adverse party a his atty. to the atty is
opposit. 2 Y.B. 203. n. 316. 306. 1 Phil. 12.

But if the original is in the hand of a third
person, the mode of proving it is by requiring him
with a subpoena duces tecum, to produce his
to appear with his witnesses in Court, & if upon
the view of this subpoena, he should decline to
bring it he is of the adverse party, according to
is the advice Peck. 97. appendix. 38-9.

5. Where an witness is produced if
there is a necessity, asking to be must regularly
be called to prove the facts of which he is
adversely and is a witness to testify in Court, if
when there is a living party he is dead the witness
indemnity, & if he is living & capable of being produced
and testifying in Ct. the witness must be produced
he is produced. 5 Feb. 16. 4th 239. Peck. 9. 97-8.

6. And this rule holds, as well when the
evidence is introduced to prove any collateral point
or incidental point, as well as when the witness
is the foundation of the action. It is dead the highest
rule in the case. 4 Feb. 239.

7. But if there are several attending but
suppose the execution of the witnesses may be proved
by the testimony of any one of them. The law does
not require all the evidence the case admits of, 1st
266. 1 Phil. 169. 364 n. and the law is so stated, that
by the law. That even the execution of the party, and

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A Court by the party is when the witness is offered does not arise from the necessity of producing the subscribing witness. This has not been in 1 Esp. R. 89, Joy 216. Esp. Dig 257. H. B. 208. 7. G. 6. 267 2 B. & P. 85. 4 B. & P. 2.

This last rule the Courts of this state have always rejected. & when the contract is proved, the witness need not be produced. See how no reports on this point. The of York cases the same. 2 John 451.

The General rule is adhered to in the Eng. l. Court, even if the witness is lost or deceased, provided the subscribing witness is known, and he is living & in a condition to be examined. Peckh. 30. Peckh. 8. 98. Abbots. 39.

That if a party, seeing a man catches an instrument & agrees to admit its execution, then it is no necessity of producing the subscribing witness. For here the witness need be paid who the Court has accepted & agreed. To get an execution is his. 2 B. & P. 85. 3 B. & P. 16. n. Peckh. 98.

Indy. 7th. 1784.

8. If there is no subscribing witness to a deed secondary, is as well admitted to prove it there there is no necessity of producing it the best evidence. Some Dig. Stat. B. 4. 1 Cas. 25. 3 Esp. R. n.

9. If a person whose name is subscribed as a witness denies the execution of the deed, after the denial, proof may be that found to support the deed, it may be contradicted. The form is the rule in such a case. Peckh. 10. 140. Doug. 216. 1. Phil. 363. 3 Esp. 173. 2 Camp. 365. 335.

In such a case, when the subscribing witness denies the deed, the deed may then be established as if it produced to be unattested.

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10 It is now sufficient for the witness to swear that he saw the Party sign & seal the deed. If the Party confesses the execution to the witness, it is sufficient. 2 B & P. 217. Peck v 98.12.

11 Again, when a deed purporting to be attested by a subscribing witness was in fact not subscribed it is provable as if it did not purport to be attested. If the ^{name of} a putative person should be signed, the deed may be proved as if there was no man signed to it. - Peck v 98.8. Peck v. 53.5 Exp. 16.

The ordinary proof in these cases is the Party's hand writing.

12. If a putative witness is interested and continues so till time of trial the deed may be proved as if there was no subscribing witness, for it is now entirely unattested. 5 H. 371. 2 East. 182. 1 P. Wms 289. Sta 34. 5 Exp. 10. Peake 99. 157-8. 185. 1 Phil 363. (Hagburn 17).

I wish to have it to be observed here that in these two last cases the hand writing of the Party is to be proved and not that of the witness.

13. Again, when the person or witness admitted the deed without the knowledge & consent of the Party, it is provable as if it did ^{not} purport to be witnessed. Phil 363. 4 Fawcett 220 3 Camp 232.

14. If after due enquiry nothing can be heard of the person whose name is subscribed and being so that the party cannot produce him upon his hand writing, the deed may be proved as if it was not written. 1 Phil 364. 3 Bui 192.

15 The rule is the same if the person who

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subscribed the deed was at the time, legally, incompetent for then he is incompetent to testify. 1 Phil 366.

In all these several examples the instrument is as one purporting not to be attested and of course may be proved as any unattested instrument. Com Dig co. B. 3. & Inst. 28. 1 Phil 364. & 365. 6. Deakes 16, 145.

16. And it is a very ancient rule. That proof of the party having written on all these cases is sufficient ground for the jury to presume the sealing & delivery of the instrument. If this were not the case the deed could be called into question. Deakes 16 145. 1 Phil 364.

17. On the other hand. If the instrument was duly attested, originally, and the witness becomes incompetent as if he is dead or insane. The land writing of the witness must be proved and is construed to be the best evidence. Suppose the witness, being incompetent inter seems incompetent by act of God or the party, or whom the party has the proof of the witness land writing is sufficient. Inst 183. 1 Pen 117 289. Sta 34. 5 Alb. 371-2.

You perceive then that during that when the deed was not duly attested originally. The land writing of the party must be proved.

18. But when the deed was duly attested originally. Proof of the subscribing written land writing is the best evidence. When the witness becomes incompetent as if he is executed a other intended. 1 Pen 288. 2 Pen 698. Sta 34. 5 Alb. 372. 1 Phil 362-3. 3 Inst. 7.

19. The rule is the same when the witness becomes incompetent by the act of the party, or whom the party has

So if a competent witness dies after reciting a fact, been as long almost as to be presumed dead 12 Mod. 74 1263; 1 B & P. 360. 1 John 230. Esp. Dig. 258. 1 John Cas. 280.

20. When the witness afterwards becomes blind the deed may be proved by proof of his hand writing.

21. The rule is the same if he afterwards becomes insane. 1 La Ray. 734. 5 Esp. 16. n. 1 Phil 362

22. The rule is the same where the witness becomes inferior after the recitation of the deed. The other rule was, when he was originally inferior. 2 Str. 833. 5 Esp. 16. Esp Dig. 258. Phil 362.

He becomes legally infamous, (only) only if having been convicted of a crime infamous as treason, felony, perjury, forgery, or any crime which impairs the witness's integrity, as a conspiracy. But misdemeanors in gen are not deemed infamous. 2 Wils 18. 5 Mod. 75. Cowp. 100 Stot. 206. to 237. 163.

23. So where a competent subscribing witness is a stranger and cannot be called upon the O. and this rule stands oblique he is deemed dead. 2 East. 250, Parker to 100 Esp Dig 258. Parker to 99. 1 Esp. 1. 1 B & P. 361.

24. So also if the witness being known dies after diligent search cannot be found the same rule holds.

25. Now where the witness is not known the rule considers the deed null and void. 12 Mod 607. Doug 89. 93. 2 East. 183. 7 W. 265. 2 Campb 282. 12 Mod. 607.

What shall be deemed a sufficient search for a witness? It has been decided that if search has been made in the place where he last resided and cannot be found & found. it is sufficient.

Evidence.

I repeat, that where the witness is originally competent and afterwards is not competent, by reason of some disability. Notwithstanding the handwriting of the witness, compared with the best evidence, better than that of the Party. Phil 165, 364. n.

26 And it seems settled in Eng? that in the last case proof of the handwriting of the witness alone is sufficient without proving the Party's handwriting. This has ^{been} much questioned in Eng? but seems to be now settled in Eng? I think it would be well also to give the parties handwriting, 2 East 183, 250, 7 Q. B. 266, 1845, 360, Phil 363, Peck. 100 n 4 John 461, Contra 7 Q. B. 266. n. C.

27. In some of these cases it has been held that proof of the Party's handwriting must be also made, to validate it — 3 Bing 192, 2 Lloyd 27.

28. In all these cases proof of the witness handwriting is proof of the making & delivery. 1 Camp 376, Phil 363.

29. In this State we have adopted a different rule. In all these cases even the handwriting of the Party is all that is necessary to be proved. It is the better proof than has the same effect as the proof of the witness handwriting in Eng? And I must confess that I think our rule is by far the better one. For the handwriting of the witness may be forged &c.

30. When in any of the foregoing cases I have said secondary evidence to be sufficient, the means of the production is necessary (that such proof is sufficient to get it in to the jury as admissible evidence). Still the Jury may believe or disbelieve or their judgment may interest them.

11. If there are two subjects between the one of whom only is not in a condition to be examined, the other witness must be called, for he is the higher evidence. But if both are in a condition to be examined, as if one is dead and the other living, proof of the hand writing of one is sufficient to render the dead admissible, for the proof of the handwriting is a substitute for the oath of that witness, 1 B & P 366, 2 East, 250, 1 McClellan, 310.

The safer mode however in this case is to prove the hand writing of the other witness when it serves to corroborate the fact.

32. In proving depositions to the validity of their subscribing witnesses are necessary, the production of one cannot be dispensed with by proof of the hand writing of all the others. This is required by Stat. in the case of witnesses, Peck 372.

But if the three subjects between of a deed are dead it is unnecessary to prove the hand writing of all of them and in addition to this the hand writing of the Party, for if this were not the case the Statute would be a dead letter, Stat. 1119, Comyns Rep. 531, Peck, 101, 2, 372.

And if the hand writing of all the witnesses they have been dead is proved, unless there are strong circumstances to the contrary all other depositions of the other will be presumed. If this were not the case it would follow necessarily that every deed would be destroyed in case of the death or other disability of the witnesses, in which case, Buller 265.

Evidence.

Tho. all these are living, yet the testimony of any one of them to its substance is sufficient, unless it will be contested. This last qualification seems singular to me. I never knew that an untested is sufficient unless there is evidence to the contrary. - This order of one of the witnesses is to all the legates of C. L. / P. 74. 1 B. R. 365. 4 B. R. 224. Bul. R. P. 264.

The legates are the testator's wife & the all the other witnesses mentioned & those they did it in the presence of the testator.

A Chy will never decree a devise to be proved & given in proof of it, unless all the witnesses are introduced to prove it. Even then the witness are almost in a foreign County.

The reason is that a probate of a Chy Ct. is conclusive on all the world and all parties are to be concluded by its probate of personal property. 1 B. R. 216. 1 B. R. 177. Cow. R. D. 78

It is the practice of Ct. of Probate in this State to decree a will proved, on the production of one of these witnesses, because an appeal is here allowed, to the Superior Court.

If any or all of the subscribing witnesses deny their subscribing the deed, the devise may produce other witnesses to establish the deed. I found that they did sign it &c. 1 B. R. 36. Bul. R. P. 264. 2 Sha. 1086.

When the subscribing witness cannot be had, other secondary evidence than that of hand writing may be introduced, as the Confession of the Party, either orally or in Chy. 4 B. R. 152.

where a deed offered in evidence was executed under the
 power of an atty. The power itself must be proved
 as well as the grantor's deed itself and the same rules
 apply to the proof of the power of atty as the proof of
 any deed. 12 P. R. 90, 4 id 238. Sugden. 202.

32. It remains the same as to the testimony of the witness
 of the witness is received both in civil & criminal cases.
 The reason is because his belief is his property. it is that only
 to which the witness can speak, for it necessarily
 presumes that he was not present at the execution of the
 deed. 102, 11 P. R. 642.

1. But this being a opinion of the witness must
 be founded upon a foundation of acquaintance with the
 handwriting of the party, derived from having seen
 him write a being received letters from him is
 a case of correspondence. Hence if a witness has
 never seen a writing or signature purporting to be that
 of the party, this is not sufficient. He is not sworn
 he cannot speak as to his own opinion or belief
 it would be a mere conjecture of fact.

2. The witness having seen him write or
 receive letters from the party is received to have
 fixed a standard by which his opinion or belief
 is established. 102-4, 11 P. R. 642, 1 P. R. 384, Peck E. R. 294
 1142. 4 E. R. 273. P. R. 1. P. 235-6. 12 P. R. 224

3. For the same reason it has been held that
 when the witness has seen the party sign his name
 only, but not his Christian name, and the writing shows
 him contains the name of the party written at full
 length the evidence was received. 2 P. R. 164.

4. For the same reason it has been held that if
 the witness has seen the party sign his name pending

Evidence.

The point for the purpose of showing a want of skill in writing, it is not admissible. In it would be making evidence for himself. This has been repeatedly attempted but was often refused by the Ct. 1 Exh 14, 15. 1 B. 207, 1 Mc. 421

5. The witness also should speak from the appearance of the writing solely, without taking into consideration any extrinsic circumstances, or for example, the opinion of the party writing it, with that the opinion of the witness has nothing to do Peck 102-3 Peck's Cas 142.

6. But that the said writing of a party may be heard in the way that I have mentioned yet a comparison of hand is not evidence. By this we understand, that it is a comparison by the jury ^{themselves} between the writing in question and a similar comparison by a writer who is to testify as to the similitude and dissimilitude of the two instruments. The principle is, and this must be kept in mind, that from such a comparison is no evidence. The reason given for this rule is, that no man ever purports to be unable to read or write and if so this may be totally incapable of distinguishing.

But the true reason is that this species of evidence is excluded because it places it in the power of the party to make out a selection or testimony for his purpose. And this goes well beyond what is established now or will be here as evidence. The former it was supposed was to be evidence. Peck's Ex. 104, 4 Exh. 273, Peck's Cas 20, 4 Mc. 487, 1 Mc. 421, 187, 4 Bk 358, 1 Bk 544, 1 Exh. 14-15, 1 Mc. 53.

In Court a comparison of hands by the jury has been allowed and is so I suppose the rule in the State of Mass. 11 Mass 312.

I observed that this was not regularly allowed in the court area of evidence. When the antiquity of the writing renders personal knowledge of the writing impossible. A witness who had made himself acquainted with the character of some person's writing by the misreading of some books may testify to their validity —

It is shown that this rule is allowed from necessity. It is strictly a comparison of hands and is admitted in no other way, only when it is the presumption of every other evidence is rebutted. Peak 104 But 236.

And it seems also that it is dangerous in fact even to compare the writing in question with the ancient writing because the same signature when the latter have been treated & regularly proved as authentic documents, is allowing the jury to judge from the comparison of the writing and not the antiquity. 7 East 282 n. u. 14 East, 328. Contra Owen v. G. 2. Peck 104 But 20, This for as received.

§. Another exception is in those cases where a person who is not a clerk or a post office, may testify from the appearance of the writing that it is a forged hand. But it is confined to this point only, he can speak as to his belief that it is a counterfeit signature derived from the appearance of the signature itself. He cannot speak as to the origin of the signature or the person who wrote it.

writing of the facts or not. —

I presume that this exception proceed from the fact that the knowledge of hand writing is matter of art to which persons, professionally skilled may be considered of testifying.

Peck & 105-6. 4 Y.B. 497. 4 Esp. 145.

Contin Peck & 105. it appears 11-12.

9. Then an. came in which matter intrinsically may be read in mind without any direct proof of its execution. Thus it is said that when a will instrument is produced by the adverse party on proper notice for that purpose given to him. It may be read without previous execution, the reason given by Bull is that the party calling for it is not supposed to have the means of viewing it, 2 Y.B. 41. King vs. Inhabitants of Middlesborough. same point argued. 5 Y.B. 366

That this rule in the unqualified manner in which it is expressed is founded on injustice is obvious. as C. J. —

This was so said that the doctrine came up again & in the case of 8 East 548. See ~~Clayton~~ & the other Lawrence with said that the case of King vs. Inhabitants of Middlesborough was much qualified at the time & had since been overruled and in that case the law is supposed to be drawn from the C. J. that when a party would

a notice produces an instrument to which ^{he} the other
 are parties. The party calling for it is entitled to see it
 must have its execution. This is the inference to be
 drawn from the case cited. This case above was
 a policy of insurance. The Poff called witnesses
 in the witness. This the deft denied. I gave notice
 to the witness certain articles of request which they
 had in their possession for the purpose of ascertaining the
 interest in question. The Poff produced the articles attested
 by two witnesses. The Ct held that the Poff should
 prove their execution. An analogy to the case in 9 R. 2.
 this need not be done. It would seem that in
 all these cases the production of articles under notice
 must be sanctioned by proof of the execution.

This point has again come up in *Walter
 Hall* & the same rule is a medium between the
 first and the last rule — It is this. When
 a Party to a will produces under notice a
 written instrument, to which he is a party and ^{correct}
 also when he claims a beneficial estate the ^{distinct}
 adverse party who calls for it shews he is a party ^{time}
 a notice to it is not to have its execution
 but in other cases the instrument is to be regularly
 proved by the party who offers the instrument. This
 is reasonable and requires no evidence. It
 is founded upon this principle that the party out
 of whom had the instrument is called. Having a
 beneficial estate ought not to require the execution
 of the instrument. But if he did not hold under
 a beneficial estate he has cause to require
 it to be proved as in all other cases. 3 Years 62.

Evidence.

Is this can the party call it for the witnesses
and not a stranger. But I cannot per-
ceive what he is a stranger to a Party. Can we
any differ, for it depends upon this very principle
that he who claims under it and produces it is bound
to prove it. But if the party has not the deed, the deed is not under his
control. If he has a certificate under the deed, the deed is not under his
control.

In the Supplement of the Stat. of A. 3. This rule
has been added, 17 John. 158.

This follows then on each of cases (the) in
which witness may be produced in evidence
within part of their execution.

33. A Deed of thirty years standing may be
read without proof of its execution provided
the paper has followed the provisions of the
deed & there is no apparent erasure or alteration.
This rule is also founded upon the supposed ac-
curacy of the seal. The antiquity presumes an in-
ability on the party to prove its execution by any other evi-
dence.

But N. P. 255. G. L. 100. 1 R. 275.

2 B. R. 532. 2 N. 466. 5 R. 259.

But if there are any circumstances from
which a presumption (may) arise that it was not
regularly executed its antiquity will not be
sufficient to be read without proof of the execution, as
if there is any erasure, alteration, or any paper
inconsistent with the subject matter or provisions
of the instrument.

"Suppose however that the deed in-
strument is thirty years old, & there are subscribers
alive and within the jurisdiction of the
Court competent to testify, must they be called?"

Evidence.

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That they need not be called. See O.P. 685. That they must be called. See. Id. O.P. 452

A correct decision depends upon the law upon which the case is found. If the law is found upon the record then the presumption is that the witnesses are dead, then if they are alive the reason ceases to exist. And with it, the rule.

But if the law is upon the general principle of law arising from the difficulty of proving the execution after such an elapse of time then there is no rebuttal of calling witnesses, for it is already proved. In the case of O.P. cited one of the witnesses was known to the O. to be alive & they ordered him to be called. But the Judge afterwards would not allow the testimony.

The better rule in every instance is to require proof of the continuance or in ordinary cases by producing the subscribing witnesses, for then the best evidence is produced which the nature of the case admits of.

34. The recital of one deed in another is as against the party to the recited deed sufficient evidence of the contents of the ^{recited} deed, because by the recital of it in the instrument which he executes, it becomes a part of his own deed and admits its contents. As against strangers however it would be no evidence for there is no reason why it should.

Perch. III. Sect 286 Sect 34

35 The rule formerly was, that if there was any express recital in a deed or attestation in the writing. The Court determined upon a proof of it that it was the instrument desired in law.

Evidence.

But by modern practice this question is left to the jury upon the issue of "non est factum". because it is really a question of fact. This is a question of identity and of this the jury are ad. and the following cases will 104. 106. 92.

I find another instrument when found is conclusive upon the parties to it, because there is the act & deed of the party.

Explanation of Written Instruments.

1st It follows of course that it cannot be contradicted by parole evidence. 1st because the parole evidence is not the best evidence of the instrument entered into between the parties & 2^d because if admitted it would enable the party who is in possession of the parole evidence to keep it back until he decides what it was to operate for a against him. Besides there would be no remedy for introducing this parole evidence if it agreed with the written document & if it disagreed the written evidence is the best because it is presumed to contain all the alterations which the parties entered into. Peck 112. 5 Co 68. 8 Co. 155. 3 B. & 275. 1 M. Ch. 92. Rob. & Tru. 8. 10. 2 B. & 12.

2^d Latent Ambiguity But notwithstanding the rule as above explained a latent ambiguity arising in the construction of a deed or other instrument may be explained by parole evidence.

By a latent ambiguity is meant an uncertainty not appearing upon the face of the writing but which arises in fact principally by force, in which the uncertainty may be removed by the same kind of evidence.

In such case the Parol evidence may appear
 the ^{legal} construction of the instrument at all. It only
 ascertains the subject matter in person. To which
 the instrument refers. as E.S. a devise to A. & there
 are two persons of that name, now parol evidence
 may be admitted to find which was the person in-
 tended in the devise. as when there is a devise of
 Black acre, and the devise has two forms which
 are called Black acre. On the same principle if
 a person has two names of Dues and he leaves
 a piece of a number of dells.

In all these cases the Parol evidence
 stands well with the written evidence. Par 112. 1
 W.R. 703. 712 138. 1 Mo. Ch. 472. sub. also 2 Cr. 769. 155. 156.
 60. 5 Cr. 68. 1 Roll. 672. 6 T.C. 571. 2 Cr. 216. 1. 2. 11 Cr. 420. 2 Cr. 35.
 "also also 3 Tanta 147. 3 M. & L. 171. 4 Dow 65. Parol
 evidence cases.

2^d. Patent Ambiguity

On the other hand a Patent Ambiguity cannot
 requiring to be explained by parol evidence. This is an
 which arises out of the terms of the instrument
 itself and not from any extrinsic fact. The cause
 of this rule is that questions arising upon the sense
 of the instrument are matters of legal construction
 and of course must be determined from the instru-
 ment itself. as E.S. a devise to one of the sons of
 J.S. parol evidence cannot be admitted to show that
 was the son meant here if this Parol evidence is admitted
 the instrument instead of taking effect according to its
 legal effect would be determined by parol evidence. & thereby
 destroying one great rule of law. Par 115-116. 2 Cr. 624 3 M. Ch. 311
 2 M. 239. 3 Cr. 257. 3 Cr. 148. 4 Cr. 650.

Evidence.

In some cases where human Patents are given, they have been held and would now arrange in themselves. Some have been explained continuing to the administration of the law generally and for the purpose of answering the intention of the party as to the value of the property in question. of the condition of the family, state of the property. See 1st. Dec. 1898, P. 502-19 P. 116.

3d. 1898. P. 116. 7th. 234 La. 831. 1st. 472.

Effect of Parol Evidence to vary { J. Huntington }
1st. Parol evidence is not admissible to enlarge or
restrict or restrain an express agreement in writing,
as is a written agreement for a lease for 10 years at a rate
of \$1000 per year. Parol evidence for a less sum a time
for a year or less period is inadmissible.

This rule is based upon the idea
that the written agreement is presumed to contain all
the stipulations of the parties and if evidence is
taken as it is. See 11. 2d. 1249. 3d. 25. 1st. 249.
8th. 452. Corp. 47. 1st. 249. 18th. 45. 3d. 249.

2d. But collateral matters about which the
written agreement is not conversant, may be proved by
parol. as that the life in the lease is not to be
to a part. for in such cases the evidence of the
contract to enlarge or restrict the written agreement
stands well with it. 8th. 377. 2d. 1250. 15th. 85.

3d. And Parol evidence is always admissible
to show that the instrument in question is not the
act of the party whose name it purports to be. as that
the deed was not read or delivered or that the deed
was given as a gift or to the grantor a testator.

4. Also it is essential to prove that the instrument
is valid for illegality or fraud.

It is all there, cause the evidence is not to contradict but set aside the written instrument, *Reed* 119. 2 *Wils* 347, 3 *Y.B.* 474, *Por. D.* 477.

5. Upon the same principle *Reed* evidence is admitted to show that an apparent illegality in the instrument was occasioned by mistake or a mistake as when there is illegal interest affected. *As* *Car* 501. *2 All. 307.* *Ord.* 28. 38. 86

6. If an ambiguity arises in an ancient instrument, i.e. to say it doubts exist in relation to the construction put upon it, unless the usage under it is admitted to explain, for in such case the usage is in the nature of a practical construction & it is not to be presumed that such a construction would have been given by any other usage. *See* *note* that construction compared with the intention of the parties. This is a very extensive rule in its application and the cases numerous *Barth* that rule is observed *Plak* 118-20. 2 *Inst.* 11. 282. 3 *Atk.* 576 3 *Y.B.* 278. 288. 4 *id.* 810. *Sid.* 388. 4 *Dart.* 327. 2 *Lawton* 126. 12 *East* 559. 1 *Almon* & *Low* 109 16 *Johns* 302. 5 *Faint* 752.

7. It is said however that at *Car. Law.* that a receipt not under seal may be explained & construed and by *Reed* evidence, or when a receipt is executed before a notary public, it may be shown that it has been explained.

The same rule is there made relating to *Car. Law* is of no greater voluntery than *Reed* evidence. Both being prima facie evidence of the receipt. *Phil* 74. 2 *Y.B.* 366. 5 *Wils* 477. 12 *Johns* 531. 2 *id.* 378. 11 *Wils* 27. 1 *Car.* 12. 414

8. Upon the same principle it has been held that

Evidence.

a Bill of Lading which includes a receipt may be contradicted
by parole. The usual form contains a receipt as follows. "Rec'd
5th July 1880. in good order &c."

Phil 74. 700 ap. 297.

9. I also acknowledge in the deed by the trustees
of the Combe estate, and of other things, where the
whole estate was given by the other the this Com-
mission does not contradict the written copy. 4 Johns 23.
2 Ylb 371 but the evidence.

10. Notwithstanding however that has just been said. It
is said again that a written contract not void can
not be contradicted by parole evidence, explained or
enlarged. — — — provided the contract is
complete and capable of a sensible construction, which
upon the original principle of the Law. This object it may
be doubted the authorities do not agree on this point.
Hill 27, 2 Blk R 1249, Bos 50. 565. 7 Ylb 351. n.

Thus far of the first &c. division of evidence

Hard Evidence

Competency of Witnesses

Then the first enquiry is who are competent witnesses?

1. A Person is said to be a competent witness, when he may legally be admitted to testify at all. Competency is a question of law to be decided by the Court.

2. The credibility of a witness, is the credit to which his testimony is entitled and is to be decided by the jury for it is matter of fact.

Whether a witness can be admitted is a question preliminary, to be decided by the Ct. If admitted the question of credit is to be decided by the jury. Peck 124, n. d. 1840. 417.

In answer then, to the question (to) who are admissible witnesses. I answer that all persons in gen not rendered incompetent by some legal disqualification are admissible witnesses, 1 McCall 95-6.

But there are certain legal disqualifications which render a witness incompetent.

I am then when render a witness incompetent by reason of want of understanding No person can be admitted as a witness who is "non compos mentis". The reason is obvious, he cannot upon the truth of the facts necessary to do justice between the parties. Hence it is that Idiots Lunatics except in land matters, are not admissible. Peck 122, 3 Gilb 144.

Br 10, 293

Intoxication

And I suppose upon the common law, that persons in.

tormented are incompetent to testify, from the intemperance of their minds. 16 John 143.

Infancy; The same rule applies to Infants who are ^{of tender} incapable of knowing the obligation of an oath.

Peake 123. Thos 700.

An Infant at 14 is prima facie as capable as an adult of doing it an objection is made as to his competency in that case the onus probandi lies upon the party objecting to his admission, 1 Hale 163, 1 Inst C. 6.

Under that age his competency depends upon his apparent understanding and this is to be ascertained by a previous examination, 2 Ld 144.

It has however been said that no person under the age of 8 has been admitted and seldom under 10 & seldom under that age has been regarded as of course. The rule now appears to be that a child of any age may be examined if he appears upon a previous examination to be acquainted with the obligation of an oath, tho the weight of testimony is to be determined by the jury.

Thus an Infant of 7 years of age has been admitted even in capital cases. 1 East

Man. Cr 441, 1 Edw 149, 157, 154, 14th. 29, Leach Cr. 14, 346, 482, Foster 70, 1 Hale 302.

However Infants who are too young to testify under oath were allowed to give testimony without oath 11 Mod 150, 29+2.

But this practice is now exploded & Infants are not allowed of course to give evidence at all upon any oath, and it is

Slave, A Slave as such is said not to be an incompetent

entire at £. 100. March 156. This point has been decided
and 4 Dollars 145. In the State of N. York they are extremely
statute excess in capital cases when the jury takes the oath and state,
V. Deaf & Dumb, at Person who is deaf and dumb, if of
sufficient understanding may testify by signs (17. L. J.)
Then, a note on the statute. Peck 123-4. Leach 316. 347.
2 Hawk 612. n.

Influence Infidelity & Atheism

VI When any man may disqualify a person to
be a witness, as is evident of the obligation of an oath and
a future State. It was formerly supposed that infidels
were incompetent witnesses, as having no oath bound
to the obligation of an oath. Peck 137-40. Co. Lit. C. 1 Hawk 434.
7 Co. 17. But now gen. no persons except Atheists are ex-
cluded on the score of infidelity, or unbelief, none
are excluded on this ground who believe in ^{the being of} a God. The oblig-
ation of an oath and a future state of retribution. Peck 141-2
1 Ark 21. 1 Wils 84. Miller 538. Peck. Cos 11.

Of course Infidels believing these doctrines
are admitted to testify on being sworn according to the
ceremonies of their own religion.

On the other hand persons disbelieving these
doctrines as either of them are incompetent. Hence the
question arising at this point is, not whether a witness
(i. e.) believes in a Lawgiver, the Gospel, or the Bible, but
whether he believes in the being of a God, obligation of an
oath & future state of retribution. The old rule was rigid
but properly relaxed in modern times. Peck. Cos 11.

Universalists This rule will of course enable you to determine
whether an Universalist is a competent witness or not.*

(Whether he believes in the being of a God, the obligation
of an oath, or a future state of retribution.) This matter
belongs to him, and is decided within in the very place.

* If he believes that in future rewards or punishments are awarded
will be excluded. (vide over the leaf. top of the page where it is contained)

Evidence.

If he believes in a limited state of punishment but in a final restoration, he is competent. This has been well said in this State.

The question whether a person offered as a witness before the doctors (necessary to constitute him a competent witness) or not, is ascertained by questioning the witness, having as to his beliefs &c. —

Peck Cas 11, 1 McW.

20. It is obvious that this enquiry cannot be made under oath for the question is whether the witness is competent to take an oath. The this enquiry has sometimes been made by way of cross-examination & McW 254, 261

In Court one C. has admitted ^{part of} the records declared of the books to show his disbelief in their doctrines and thus excluded him 4 Day 51.

VIII Quakers,

Quakers, who believe it unlawful to take an oath are admitted by the Eng^l Statute to give evidence in civil cases without oath upon affirmation they are however not admitted in criminal prosecutions 2 Ann 1214, Peck 143, Cowp. 382. Sta 854, 2 Burr 1117

But notwithstanding a Quaker cannot testify in a criminal prosecution, yet an affirmation in the form of an affidavit may be read to exculpate himself

In this State Quakers may make an affirmation in civil as well as criminal cases, & so do persons who conscientiously refuse to take an oath

IX Infamy,

Another legal disqualification arises from the legal infamy of his character & the case that a person legally infamous is excluded from testifying in all cases Peck 794, Gilb 139 C. & C. C.

Evidence.

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1. By puns, legal maxims, are meant those which
 are committed of some infamous crime, as Murder,
 Forgery and crimes coming within the term of crime
 felonious, such as
 Forgery, perjury, or any crime which in its nature impairs
 his integrity or honesty, comprising, Lord C. 118, 496 308.
 2 M. & B. 18, 5 M. & D. 75.

Voluntarily a crime of an officer which
 is a crime, is punishable as the felon, or con-
 sidered as a crime of the (offender) infamous. But the
 criterion now is, the nature of the offence not the pun-
 ishment. 3. Inst. 218, 2 Hale N. C. 277-8, 1 M. & M. 140.
 2 M. & B. 18, 2 Hawk 46.

Then it is that the conviction of a
 infamous offence as a crime, under the Act of 1800
 renders the offender punishable by (fine) fine. On the other
 hand, a conviction of libel punishable by imprisonment, renders
 the offender not incompetent, because it is the offence
 and not the punishment which determines. Peck 127, Calk 141, 3 Les 426

2. When legal infamy is merely a consequence of
 the conviction, the party is restored to his competency
 as a Pardon from Govt. Peck 128-9, 1 M. & B. 348, La Rey
 257-8, 2 Hawk 558.

3. On the other hand, where his incompetency is by that
 made a substantial part of the punishment, a pardon
 does not restore his competency. It perhaps would
 be more precise to say that where the legal incompetency
 is a substantial part of the sentence a judge or pardon does not restore
 his competency. The reason of this distinction is that in former times
 a judge was not the legal consequence of a judge. But a
 pardon could destroy the judge's title. In the latter
 case nothing that is a consequence of the judge's title, but a pardon will
 restore his competency. Peck 128, Holt 687.

4. If one is convicted of a chargeable felony and then it is found the felony vector his competency he is entitled to a full pardon.

5. To also under the 19. Q. 3. W. 1. is that a full pardon of felony vector his competency is evidence for the Jury under Peak 128, Leach 115.

6. But a certificate of an informant given with a pig in pursuance of it is no evidence of an indictment because a verdict is no evidence of a fact found by it without a pig in pursuance of it. in any case, Peak 128-9, 49-50, 1 Leach 51, Corp. 3, Felt 686.

But this, a pig is necessary to give validity to the verdict, yet proof of the receipt of the pig is not necessary for the legal inquiry does not depend upon the punishment. It is the result of the trial.

And it seems now settled that the proof of a verdict legal inquiry can be made even otherwise than by producing a record of his conviction 8 East 77, 4 D. 123, 13 John 82, 12 Mod 584 1 East 309, 2 Halky 151, 241 1 Holt N. B. 541. There have however been cases in which the witness has been called upon to declare the fact of his conviction of an infamous offence upon the voir dire. 4 R. 440 Peak 129-38, 3 East 152, 1 Mod 210, 219. This practice however seems opposed to principle. For a party producing evidence has a right to insist upon it being proved by any record unless that record is produced. But further a witness is supposed not to understand the precise construction of a record and therefore ought not to be questioned as to the point.

Evidence.

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Whether a witness is bound to answer any question, the answer to which would not charge him with any crime but merely disprove him, is a question.

The latter opinion seems to be that such answering cannot be made of him Peck 129. 138. Phil 208. 287-8. C. L. 158. L. 13 Johns 82.

If however the witness is asked if he has not been guilty of a felony, and he answers that he has not, this answer of the witness cannot be contradicted by the party questioning him — Phil 230. id. advertis. 3 Ed. Page 6. 1 Halls Cr. R. 541.

Whether at Common Law, he is bound to answer any question the effect of which might subject him to a civil suit is a matter of doubt.

Phil 208.

In Eng^l by Stat 46 Geo 3^d he is compelled to testify, In a case out of this Court 8 of the Judges with the Lord Chancellor held that he must answer 4 of the questions held to the contrary — 1 Halls Law. 223.

In Court this point has come up and our Supreme Ct. of Law have held, that the witness need not answer when it would subject him to a civil suit 3 Com^l R 529.

Impeachment

1. The general character of a witness who legally appears may be proved not to exclude him as incompetent but to detract from his credibility, this is confined to his general character, particular facts cannot be proved for this purpose. The common is that he cannot be supposed to be disposed to meet the civil charges without notice. Peck 125. Bur v. R. 296. Phil 212. 4 Ed. 202

Evidence.

Evidence - of this kind can be given only by those who are acquainted with the general character of the parties -

In Eng. the question put therein is, "ought he to be believed (and) would you believe him under oath?"

Peck's Cas. 11.

Phil 212.

In Eng. the only question allowed to be put is "What is the witness's general reputation for veracity?"

But this, the general character can only be called in question by the party producing him; and may call upon him to state the ground of his opinion.
4 E. 1034.

2. Prior Delinquency, made out of Record of an inconsistent with & discreditable his testimony may be proved, and for this purpose a letter or deposition by him may be introduced to contradict.

Phil 212. 2 E. 1069. 3 E. 279.

The party producing a witness is now allowed directly to impeach his character by evidence before him may exhibit evidence contradictory to what he states he has sworn. Peck 129, 2 E. 556, 2 T. 334.

He cannot to evidence impeaching the witness the party may attack and impeach the character of the witness's witnesses.

In Eng. it is now to and since he may have that the witness has sworn and the fact that went on that would impeach the witness.

Phil 213. c. 12.

The testimony of a witness may be discredited by proof that he was intoxicated at the time called upon to testify.
Lusk E. 144. 2 D. 201

An Accomplish a parties claim may testify
either for or against him. The situation in which
he stands goes to his credit. Peck 138-9. Hawk 608-9.
1 McCal 183. 198. 203-4. 379. 2 Hawk 608-9.

And it is no objection to the competency
of a witness that he has received a promise of reward
or a reward in consideration of his giving evidence. This
goes to the credit only and doubtless ought greatly
to impeach it. It would be difficult to show on
principle that such evidence ought to be shut out and
the public excluded from the benefit of it. Peck 139.
Hawk Ch 36. 2 Hale 280 or 288. 1 McCal 194. 201.

Interest creates and perfects the most severe ground of
incompetency in a witness is Interest. It has been supposed
that witnesses who are interested are inclined to believe
them from the danger of committing perjury. This is
evidently a mistake for if so many cases of an
interest in the question merely would exclude. For many
of them, the temptation to commit perjury is great. Thus
the heir at Law is a competent witness at any time
during the life of the ancestor respecting the estate. & his
temptation is strong.

The true reason I suppose, is the pre-
sumption of a supposition of a want of integrity, growing
out of the knowledge a disadvantage which is to follow.

This in point of fact does not exist in many cases
but the law presumes that it exists for the sake of a
general rule in the law. An Interest in the question

1. Simply an interest in the question
at trial rendered a witness incompetent.
Peck 144-5. Phil 35-6-7-8. 17 R. 301. Folch 283. The 1043

Evidence.

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2. By an interest in the question is meant the interest which the witness has a mind probably, the witness - and which he exists from being in the same situation of the party by whom he is called forward, in relation to the fact to be tried (in relation to the fact to be tried).

As in these words from his having a being exposed to some claim which may arise from the facts in question the his rights would not be affected by the verdict on just in the case in which he is offered as a witness.

If that an interest in the question is in evidence nothing more than a bias or a wish for a particular result of the trial may take place. If of that is peculiar never was admitted to go to the competency. But in practice it was admitted by admitting this bias for interest, a rule of admission too uncertain for practice and too limited for the investigation of truth. Peck 144-5. E.D. An act is best as an undoubted where Policy of Dummer another rule upon the same policy is offered to prove some fact which if proved would be a defense for both. This is an interest in the question, he has a strong desire that the under should succeed. He is exposed to a claim arising out of the same state of facts as those to which he is called to testify. So too, an actor is best as a witness he offers a fellow commiserate or a witness.

Separate indictments for perjury as Ad. for swearing to the same fact. A is offered as a witness for B. here A has an interest in the result.

So an actor is best by his motive for test his reward, and with a "per quid" here the reward is intended in the result for when he swears his answer

Evidence.

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those facts which constitute the matter of evidence and support
his:—

As also one person injured by a trespass is offered
as evidence for another injured by the same trespass, and
for the same cause. The witness is interested in the event.

In all these examples, the event of the
suit does not affect the witness, Peck. Ex. 166. Sta
595. 944. 1054. 3 Mch. 18. 8 Buss 377.

I found that, accordingly, the rule which
can exclude But it is now settled and the case
of Bent & Baker 3 Hb. 36. That this means of interest,
given regarding also to the credit of the witness, and not
his competency. There is the example above. The
witness's interest in the event is all competent
but their credit is to be judged of by the jury. The
case of Bent & Baker, is the leading case. Peck 144-6.
1 Y. B. 163. 302. 7th 60. 603. 4 Burr 2255. 2 Y. B. 496. 4th 20. 589.
5th 604. 1 H. Blk 303 Buss N. D. 283. Phil 37

And the general rule now is that the wit-
ness is not disqualified on the ground of interest unless
he is ^{in a situation to be} immediately benefited or injured by the event of it.

The foundation of this rule is, that it is the least exclu-
sive, & it is the most accurately defined & therefore the wit-
ness must clearly ascertain, is ant. et 3 John 834. 302
5th 256. 1 Day 266-70. 2d 531. 6 Bing 316. 1 Lj. 1 Hall 32-6. 2 Lj. 68
4 Taunt 18.

3. Upon the principle that interest in the question does
not exclude. It is held that a person (not) injured by the
offence, is regularly in crime cases, a witness in the prosecution
though he may have a claim for the civil injury involved in the
crime. The reason is he has no interest in the event
of the prosecution. He has an interest however which goes
to his credit.

This rule has sometimes been qualified by the expression
 "unless such verdict can be given in order in a civil suit
 between the parties, but I think there is no case at Common Law that
 such verdict is right and begins in order. Stark
 146. Phil 86. 90. 49 R. 00. 1 Com. 9. 151. 4 East 581. 1 Tenter 520.

Thus upon an indictment, or at for a Battery upon B,
 or for stealing his goods. B is a comp^t witness. Tho. B may
 have a remedy civiliter for damages done to him. 2 B. & L. 240.
 Hurd's Rep. 331. 1 Mod. 53.

So also upon an indictment for robbing the
 party robbed is a comp^t witness. Tho upon conviction he is
 entitled to a restitution of his property. Tho he is entitled to
 the property whether a conviction takes place or not. Phil
 87. 2 Mod. 30. Leach 290.

On the same principle an action for a chest
 the party defrauded is a competent witness. 1 East 48. 2
 Sid 431. Talk 286. Carter Talk 283. Sta 1043.

So also upon an indictment for perjury at Common Law.
 the party injured by the perjury is a comp^t witness. 4 East
 1230. 4 East 581. 4 Burr 2255. 1 Mod. Carter Sta 1104. 1042.
 Hurd's Rep. 331. 1 Mod. 53. 4 Burr 2255.
 Peake's Cas 104. Phil 87.

In the last case of perjury. It is immaterial
 whether the witness has or has not satisfied the jury's opinion
 as being for the officer. Forasmuch the rule was that the
 jury must be shown to have been satisfied. The reason
 was that upon receiving the conviction, every word
 sworn to by the jury. Now if this was altered the indictment
 would be void in the event.

But it is now well settled that every word sworn
 to is not void by the testimony of the perjury.

Evidence.

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Phil 87. 4 Ben 2255. 4 East 577. 4 Dal 412 vide the old rule
1 Em 27. Peckh Cas 12 Gill 124.

And it seems that since we enter for perjury under
the Stat of Eliz. the perjury is a const. duty. The Stat
that gives him the help of the forsworn. The reason given
is that in his action for the clearing of the forsworn
the record of the conviction is a supposed word and is
evidence. But would it not be evidence of the fact that
a conviction had been obtained? How else could the witness
bring his help of the forsworn? For if no conviction
he is unsworned to it. & if convicted the only legit-
imate evidence of the conviction is the record of the con-
viction. It would seem then the record ought to be evidence.
The for a long time the first reason has been admitted
and adhered to — Phil 88. Vide East Gill 124.
2 Roll abt 685. Bul N. 289. La Roy 1229.

And it seems that those to whom Justice is given
by Stat for apprehending Offences are competent witnesses
as they are. Hence in these cases there is a direct witness
in the event. But this rule is bound upon the substance
that if this evidence were not admitted the very spirit
of the Stat would be defeated. That the Stat is given
to induce them being a knowledge of the fact to
perjure. In my mind the reasoning of this rule
seems doubtful. In some of these Stat's express provi-
sion is made for their admission, & in others no provi-
sion is made. but in most cases they are admitted for
the reasons aforesaid — But I very much doubt whether
it would not be better for the clause to be inserted
that to admit persons so deeply interested, in the case
of the Stat Peck 171. 2 - Moll 422. 3 East 455. 4 id 180.

Evidence.

In an indictment for tearing a note the promise is a completed act. For he has no interest in the present. Peck 147. n. Ste 585.

So also upon a prosecution for issuing under the Act the warrant is comp^d to prove the whole case and this whether he has received the loan or whether it is still outstanding. For in an action to recover the money lent. The record of acquittal or conviction is no evidence for or against the parties to the crime. Peck 147-8 n. 4 Bond can obtain and is Dancy 2257 7 D.R. 60. Cuius 168. 5 Mass 52. Phil 90-39. Carter Gil 124

But a prosecutor or a person who is entitled to a part of the proceeds is incompetent to testify in support of the prosecution. Because in such case he is having the staff & whip all the while & cannot testify in his own case. Peck 152. n. Ste 315. Cases then cited. Peck Case 218. 1 B.R. 95. and different cases laid down Gil 132. 3 Mass 114

But in a high case for a prosecution for larceny it has always been held that the facts by whom the instrument was procured & where been made is inconsistent. provided is the instrument. 'extrinsic' it to be given would subject him to a severe & loss a deprivation of a right or claim Peck 147-8. ¹⁰⁸⁻⁹ Phil 88. 90. The same case 331. 3 Salk 172. Ste 728. Lord 10. 29. 255. 2 B.R. 14 C. 995. 2 D.R. 87.

And it seems that the rule is the same even if the act is in which the obligation is forged & is false. Peck 148. I would suggest however in this place that if the obligation was given in pursuance of a duty & second the act is not and he is not a popular interest in the execution. Because the first has a popular law.

Evidence.

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The incompetency of our Affidavit makers extends to every fact which might conduce to prove the forgery. of course it is not confined to the mere recitation of Hand writing, but any fact which serves to prove the instrument forged, the writer is incompetent.

Phil 87-8 Peck 167-8. 2 Ark 87-80. 2 Cal

Pl. Cr. 996

On the other hand however the witness is incompetent to testify to any collateral fact which does not concern the issue of forgery. See Phil 88. 1 McCall 143.

But the other is the well settled rule is En. D. yet in many cases the States it is reported, it may be well to enquire the origin of this rule.

Whence had this rule its origin? It is said it arose from the Government that a certificate was with a forgery, and thus defeat the prisoner from any legal claim.

But that this is not the true cause is manifest for the instrument might be forged in the name of a third person & it is clearly there is no forfeiture yet in this case it has been held that the witness when sworn was so far from an incompetent. This has arisen from the recitation of procuring the instrument. But this is no reason, if not destroyed but exists as an instrument, and of course the prisoner may still sue upon it tho it is not in his possession.

The case probably was the same as in the earlier stages of English jurisprudence whereby all persons interested in the estate, or business, maintaining a suit for interest, & for fear of losing the suit, with all the means of securing least purchase they made

Evidence.

They must decide wrong

This rule is an anomaly in the Eng^l Law, and is founded on precedent, & the Eng^l rule "stare decisis" appears here. I have no fear that the Eng^l is a very sound & effectual rule, especially since a dozen series of precedents,

But notwithstanding

the Eng^l rule is applied. This rule does not hold that the party whose name is forged, would not be affected as prejudiced, (supposing it to be genuine). The Cathie of a Bank is a competent witness to prove the forgery, to a Bank note, for he is not personally interested, it is the case of a witness who is interested. Peck 169, Leal 350, Phil 29, 111 Cal 120 & 121.

When the same principle is here seen. Here that when one whose name was forged to a receipt, he could give the person the money it appeared to be given for, he was held to be com^p for the fact. He had rec^d the contents of it. Peck 169, Phil 289.

Take however if the Person who name the witness is forged would be affected by the witness. He is incompetent & this rule extends to all others who are parties to the forged instrument who are interested in the question. E. S. In an in-
dictment for forging a will an Exec^r named in a sub-
sequent will was not com^p to prove the forgery of the first. He was held incompetent because he was interested in the (question), ^{event} for he would not under the will provide the first was forged. And it has been held that the case is the same as to a Legatee, who is incompetent to testify to the true contents of the will, for he is interested. - Goddard 331, 3 Peck 170.

side from the opinion of La Muer's discharging of the
 duties

But notwithstanding the rule that the law is
 given by the judge, yet an intention is an
 essential which, yet he may be released
 by a release. For then his intention ceases. For
 after the release he is in no event bound by
 obligation. Thus the holder of a good title
 having released the claimant as a plaintiff
 not the maker, it renders them incompetent.
 & this was done by La Chetard in the celebra-
 ted case of *D. Douda*, 169. m. L. 184. Phil 88.

This rule of the Law has not been generally
 given satisfaction in this country. In this State
 he is permitted to testify, and at least so has been
 the decision in our Supreme Court. In Mass & in
 Penn^a they are competent witnesses, & in New
 York it would be so decided, under Phil 88. n.
 2 N. B. 49. 96. n. 10. 100. 7. B. 82. 1. 100. 100.
 2. 239. 4. 246. 296. 302-3. } An Interest in the Event-
 of the fact. On the other hand a person who has an
 interest in the event of a suit is equally incompetent. (Pack. 144.
 6. 163. 170-2. Phil 43-4. 50. 3. 7. 36. 7. 60. 603. 7. 498)

1. By an interest in the event is meant an
 immediate and certain benefit & disadvantage
 to arise to the litigant from the result of the suit. The
 term "immediate" is opposed to a remote interest
 and the term "certain" opposed to contingent or doubtful.
 & as the rule is applied in the words, A witness is
 interested in the event only when he will on the one
 hand acquire some certain immediate right or ex-
 ercise some loss or liability by a determination in favor
 of the party by whom he is opposed.

Evidence.

or on the other ^{had} side some certain immediate loss or liability to loss in consequence of some determination in favour of the opposite party. If then he is to give a verdict in favour of the party by whom he is affected or of him to whom any loss or liability to loss is from of the opposite party, he is incompetent.

Black 144 Gilb 106-7. 4 Yl. 20. 2 Phil Cas 235. 4 John B. 302. 5 ib 257. 16 ib 89.

In gen. ^{the} not universally the question whether a witness is interested in the event, depends upon the record of the cause in which he is affected can be given for or against him afterwards in any suit in which he is a party. Phil 43-4. 3 Yl. 32. and onward. 308. 7 ib 62. 4 East 58. 4 John 230. 5 ib 144. 2 Esp Cas 486. 4 East 572. 1 Doug 289.

This in some instances has been considered as the only criterion for the interest in the event, but it is not the only one.

It results from what has been said that if a verdict is a piece for the party who offers the witness, can be given in evidence for the witness and in favour of the verdict for the other party can be given against him, he is of course & universally intended in the event and equally incompetent.

If the verdict cannot be thus given in evidence for or against the witness he is generally competent to the suit universally so.

I think it could be more proper to say, instead of the "verdict a piece" and be given in evidence. The word "record" and be given in evidence. For a verdict of itself, unless there is a piece in favour of it, never can be given in evidence.

and in many cases the record is that alone, which furnishes evidence of facts which create the witness (the interest). But as there are many cases, in legal contemplation no records within a single, a "record" is never proper being evidence of the records of the 4th of the

Illustration. In a suit by A. claiming a right of common by custom. Belonging by the ^{same} custom is not competent to testify, for the P.M., because B. might afterwards sue the same without to establish his own claim. A record, establishing a customary right of common, being used by any person having that right. Phil 44. 5. n. 176. 302. 2d 32. Bae N.P. 283. La Ray 731.

The owner of an inheritance in a chapel is incompetent to prove the liability of all the inhabitants to repair the chapel, and this, even tho he has used his property for years with stipulated rate without any deduction, even tho he has paid the rate and lives in a different County. The reason is that he has an interest to discharge the inhabitants from a permanent burden. See the record word he evidences. 1 Bae & Ald. 87. 2 Hurst 215. 1 Holt. N.P. 619.

A. Peron bill for the costs of the suit on either side is incompetent to testify on that side, because the record will be evidence for him, for e.g. in an action by a - J. P. P.M. his guardian & whoever any, is not a competent witness for him, because he is liable for costs if the J. P. fails. The guardian has no interest in the suit pending independent of the costs. But he has an interest that the P.M. should recover. Phil 46. 1st 548. 1026. 2d 107. 176. 481

Evidence.

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In some of the elementary rules this rule is laid down with this qualification: "If he has given bond to the Sheriff for the faithful performance of his duty." But this qualification is not necessary. For he would be liable to the Sheriff in an action whether he had given bond or not. *La Rey 140. Phil 46. Tit 650. 3 Camp. 523. Ark. 165.*

So in an action as a counter for an injury arising from the negligence of the servant, the servant is not liable, without a release. For in this case the law should be evidence as to the fact as to the amount of damages the master is to the fact of his liability, *id. id.* The leaving of the Master constitutes the cause of action. The servant, for if no recovery with the Master. He would be liable by the servant. Therefore in a later case in an action for negligence, *as in the previous instance.* The Court took the view that the position it was in competition with the original employer. *Phil 46. 4. Ark. 588. La Rey 1007.*

15 East. 474. 1 Camp. 251. 3 id. 516. 1 Esp. R. 338. 1 Holt. N.P.R. 139.

In an action on a policy of insurance for a loss by the balling of the master, the master is not admissible for the underwriters, unless released. Because if they are accepted the master is held over to them and the law would be evidence as to his damages, not as to the fact of balling. *Stark 166. 1 Esp. R. 339. Phil 47. N.A.*

So also in a suit by the endorsee of the acceptor of a Bill of Exchange accepted for the accommodation of the drawer. The drawer is not a competent test, for the debt to prove the transfer of the bill. Because he is liable only to the acceptor, if the bill becomes, not only for the amount of the Bill but for all damages which the acceptor may have sustained in consequence of his acceptance. The law is evidence

Evidence.

an implied promise to the owner to indemnify
 the master in all damages, well it was for this
 the owner would be a complete surety between
 the parties. Here excellent I am speaking of
 an accommodation acceptance, Phil 467, 474, 475
 464, 18 and 408, 1 Hen Blk. 306, 1 Sta 575.

This case furnishes a good example of a witness
 present in the event of the suit.

Upon the same principle is an ac with
 surety in a bond. the principal obligor is an ac with
 for the surety, because if there is a recovery by the
 surety he can recover of the principal all the damages
 he has sustained, the law being an implied promise
 between the principal & surety. 7 Hen 206 4 Day
 108.

There are all illustrations of that branch of the
 law when the bond of the Pff

off the surety for the Pff would be subjecting
 the debt exclusively himself from any liability he
 is regularly incurs. Thus the guardian is reg-
 ularly incurs in liability of his ward, not, Peck Cas
 84, 2 Mass 444, 4 de 558

So also in an ac of disrepair by one tenant
 in common grounds his claim becomes on the com-
 mon till his co-tenants are incurs liabilities,
 for him, because in such case the recovery was
 given to the benefit of all. the propriety of an action
 in common recognizing the title of the others is
 in contemplation of law the prop, of all. after
 such joint the co-tenant might bring partition
 a/c for the rents & profits, & the joint would be ended
 for him 1 Cor B. 354.

Evidence.

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at present who has conveyed land with covenants
of warranty is an ancient writ to prove the
grantee's title in Equity for If the grantee is con-
victed under a false title the Grantor is bound to
reclaiming him. Phil 47, n. a, 3 Day. 433. 2 J. B. 394
60 523. 5 Day 378. also 3 Johns Cas. 82.

If the deed however contained only a Cert.
affirming it would seem that the ^{grantor as a} witness is competent
unless he has been wound in. If wound he had
been wound he would have interest in the event.
Because the pig's, the grantee would be conclusive
evidence as being for he by being wound in becomes
a party to the suit. The grantor would be liable
or not independently of the event of the suit, and whether
he is or not depend upon the question whether he
was seized or not.

As to the land If the grantor without
out of telling warrants except a writ is admissible
in support of the title because he is not interested
in the event, for whether there is or is not a wrong
with the grantee is immaterial having executed an
Oath Phil 47 or Peck 170. 2 Brins 95

Upon the same principle of the grantor
for, well and merely as then claiming under
himself. He is competent as a party not claiming
under him, because by the supposition the Court
does not extend to him & therefore immaterial
to him about the event of the trial being so.

As to the same case the endorsement of a B.
of a letter without endorsement is an act by the
endorsees as the drawer, to prove the B. B. title, for
he has no interest.

Evidence

For being secured, the Bill nothing secures to him
it follows of course that security can be had in no event.

3 Com. 165⁵¹⁶ 566

The intention of a town health to be sold for
the poor, if not actually sold, are comp. witnesses
for their town a parcel, in question of settlement, seem
their interest is contingent. It is essential that
they will not pay any part of the price
that is secured. If they were sold it would of course
be otherwise upon even principles Phil 47, 4. 7. 137.
6 id. 157. 2 East 561. 15 id 470. Peck 163-4.

It follows as a general rule that a party who
suits cannot testify (to a suit) for himself or for his
co-parties because he has an immediate and
necessary interest. Peck 149. Phil 57. Eld 110. 1
Ber. 230. 1 Peck 149. 596. 1 Day 106. 4 Day 388. 10 John 128.

And this is the rule that the Party is a
mere trustee having no beneficial interest in the
subject. He is interested in the event because he is
liable for the costs & this intent is certain, his
ultimate indemnity from the person for whom
he acts, is contingent. But he is liable for costs for
costs in the suit. Peck 148. 3 East. 7.
Peck Cas 153. 7. 7. 16. 668. Phil 57.

In Pennsylvania, it is said that as the person
concerned is interested in costs it is held that
the nominal Plaintiff is a comp. witness. 3 Bin 306.
Felt 478. 2 Dallas 172. n. 4 id 137.

And the rule is said to be the same in South Carolina
2 Bay. 93.

When the same person is Plaintiff & Defendant
in an account stated, the rule is well settled in Eng.
at the present day, that if Plaintiff he is not liable for costs

When the M^{rs} is he excluded the M^{rs}. Is it because
his disbursements may or may not be allowed? This would
not seem to be the case because the interest being
in part a loan is cutting out. I would prefer
that this rule is founded upon positive Maxim,
that the presumption in the interests of the Party
cannot be rebutted. For I can conceive no other
reason why he should be excluded. For M. Supp-
lier he has no beneficial interest. This 57. or 57. note C
1000 446. Oct 16. 1 P^m 188, 2 Dec 42. 2 Dec 183.

The members of a corporate society have
dividend interests in the fund, in as much as the
title is for the corporate. Thus the members
of a charitable corporation having no benevolent
interest in the fund, and not necessarily held
for any one cause, for they have no interest in
the event. Peck 148, 150. Phil 57, 98. Peck, Cas. 153.
& John 220. 8d 462. Relief 398.

But it is therein where the corporations are
personally interested. in the vulgar & a capital & com-
mon is when they claim an exemption from toll
altogether, because a right appears to be opposite upon
their private individual interest. (Part 351, Vol 92.
5 Y.B. 174.

And the function of the interest in point of amt.
makes no difference, if interest with more power
will the ratio is excluded. If it is impossible for
Ct. to prop. to determine the degree of interest which can
be elicited by a given or larger amt. But 11 290. Phil 52-3.
54. 11 John 37

The Contracting of Corporations may be entered by disfranchisement. If the purp^t of disfranchising is irregular the corporations are exempt.

Phil 28. 1 P W 585.

So also the competency of expert witnesses may be tested by a recognition of their expert qualifications, for in both cases they cease to be any witness.

Phil 28. 1 Ch. 432.

In this State the members of Public Credit corporations as Loans, Educational Societies &c are competent witnesses in all cases where their expert testimony is pertinent. This is said to be partly from the usual necessity of intent and partly from supposed necessity. Supra Ex. 57. Phil 58. n.

But as the other had the members of a corporation of a private nature as Banking: Insurance Companies & Insurance Companies are competent: Their interest is certainly not generally as much important than that of the members of Public Corporations & there is not that interest. Supra Phil 58. n. (Ex. 57. of 1st) -

— Banking Co. —

As a witness a deponent cannot testify for his ex-
-deponent for his evidence would go to prove or least that they
were not jointly liable or charged, still however it is said
that in an ex-empting, in fact if there is no evidence
whether given as one of the depts. he is entitled upon
the close of the P's evidence to be discharged and may
then testify for the other. The reason given is, that other-
-wise persons would be made depts. for the very purpose
of excluding their evidence & thus the P's or the com-
-munity be secured an unjust verdict. If he is dis-
-charged of course he has no interest. Because the
entire winding up of the matter can be no continuation
imposed between the depts. the result of the matter to be
done thus decided, is sometimes Phil 61. 1 Ch. 237

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Call 117. Bre N.P. 285. 1 East 312. 2 Hawk Ch 46. Sec. 88. Peak 152.

I find however in a late case that it is said that this discharge cannot be claimed as matter of right but that it is discretionary with the judge whether he is allowed to be discharged. The general rule laid down conforms to this.

Suppose in present he is generally discharged but I also think that it is discretionary with the judge whether to discharge him or not. Phil. Ct. N.A. 1 Holt N.P. 275.

If however there is any evidence as to the co-deft thus offered the whole case must go together to the judge. For otherwise the question of fact would be determined by the Court instead of going to the judge or it ought to. Phil. Ct. Bal 285. 3 Ed 25. 14 John 119. 15 John 223.

I perceive that it is laid down in Philips that in trespass or assault charging the wrong to have been committed by A & B. if it appears that B was ^{in fact} concerned in the trespass & present injured and an attempt made to assault A the prosecutor loses. in such case B is an incompetent witness for A. Phil. Ct. Bal 286. Hardwick 123, 264. But this rule is certainly not founded on principle. For the witness offered is certainly not interested in the event. For by the supposition he is not a party. For no process is served. and the case would not be ended as herein because it being a trespass there is no liability to contribute. & not being a party to the suit the case could be no evidence in him. 10 John 21.

If a witness for the Off is by mistake made a deft the Court must in such case his name to be struck

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out of the way then be examined for the Piff Phil 63. 1
Lia 441 Bul 285

And in the case of an information the Atty
General may enter a "nolle prosequi" as to the
of the delinquents and then examine him or the
other Phil 63. Hard 100, 63. a 163.

On an indictment or several one having sub-
mitted and found his fine is comp^d to testify for
the other, because as to him the case is at an end
he has no interest as to the guilt or innocence
of the other depts, because he has submitted & he
has had no interest in the fine for by supporting
he has paid it. Phil 62. Sta 633.

On the other hand, merely receiving pay^t by depar-
does not restore his competency either for or as to the
other delinquents, for in the first place he is still
a party to the record & again the case as to him
is not ended for good the rule of competency
he is still on trial. he has indeed no interest in
the guilt or innocence of his co-dept, but as to the
fine he is interested. Phil 62. Bul 285 2 Com 333. n
10 John 95.

So also when one of the depts on a joint contract
has obtained his discharge under the Bankrupt law
he is an incompetent witness for his Co-dept.
1st on the gen principle that he is a party to the record
in the record plane of the other dept. Should pay the
whole, he can't counsel the Bankrupt to contribute his
proportion unless there was a positive promise of the
Bankrupt, exonerating him. 3 Esp 25.

So also in an action on a joint contract as two

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if one suffers judgment by default he is not a competent witness. not for the D^y because if the ac prevails the Party defaulted is compelled to contribute to the fees. not is he exempt for his Co. def^t for he has an interest. for if the action fails as to one it may succeed as to both. then must be a joint judgment. Phil 02. 4 Yount 752:

Not only as a general rule is an admt. not admiss-
ible for his ev. deft. but a person jointly ^{with} with a deft
is a joint or liable in his stead the not being a
party, is an ~~improper~~ witness to defeat the suit be-
cause by the supposition he himself being subse-
quently liable. The case in the case is where he
is called as a witness would be admissible as being
other 28. as partner of the deft the not made a
party to the suit is not admissible to prove that
he himself is wholly liable and that the deft. who is
now acted as his agent. for he himself being liable
he is responsible if the P^ly recover, for at least half
the costs. and if the deft. acted merely as his agent
the P^ly recover, the witness is responsible for the whole
dam recovered, and therefore he has a direct interest
in defeating the P^ly claim, Peck 155. 170. Peck
Cas. 174. 5 Bass. 2727.

A letter from the dep^y however in its con-
tent would of course establish his competency. Peck
155. 178. 181. 183.

In pursuance of the same general it has been
 held that in an act by a joint owner for exp. and don
 to the vessel, and the joint owner cannot testify for the
 Df, to prove ownership of the Df. For there is no owner he

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would be liable to the Off of he succeeded. Yet he has an interest to charge the debt as or to increase the number of owners and thus diminish the amt of contribution which he is called to pay. The Court would be careful of the amt to be paid whereby to regulate the contribution 16 John 89.

Admitting the gen rule at law, that a party is not a competent witness & that an debt cannot testify for the co-debtor. Yet in Eq^y one of several respondents having no interest may be examined as a witness for this is a matter of course in that Ct. They very properly look at the substance of the thing Phil 63. 30th Nov. Fuller 383. 2 Chz Cas. 214.

A Bankrupt (is not a competent witness) is not a competent witness in an ac brought by his assignees to prove some property in having a debt due to him or if that is the subject of the suit. The reason is, that under the Stat of Bankrupt. An incumbrance of property augments his allowance. of course he is directly interested to increase the fund. Peck 167. Phil 51-58. Bul 43.

Indeed it is a gen rule of Eq. that if the effect of the testimony of the witness will be either to create or to increase a fund in which he is entitled to participate he is incompetent. For in all such cases he has an immediate and certain interest. 5 Johns. 258. 2 Dallas. 50. 1 Mass. 239. 13th 396. 2 Day & Bay 466.

So also the Bankrupt is NOT competent to prove any fact which is necessary to establish the claims of Bankruptcy, because he is interested in increasing the contributions. For if that is not good the creditors

and all the proceedings under it are void and of course
the Bankrupt under it will be liable to pay all his debts
Peck 168. Phil 51. 1 Ch 829. 2 Hen 8th. 279. 5 Eas 22.

Of certain exceptions to the rule, "That the record
may be given in evidence when the witness is interested in
the Cause;" It is now universally true that the record may be
given in evidence whenever the witness is interested in the Cause.

For, there are cases in which the witness is accused
interested in the Cause tho' the record would not be
evidence for or against him. such cases are however few.
Thus: In Thomas vs a Sheriff by Ch. for taking his
good as an execution vs B. B. is not a compulsory
to prove the property of the goods in his hands. The
verdict is a point. however in this case would not be
evidence for or against him in any suit relating to
the title to this property. But if the Sheriff pleads the
execution debt vs B would be discharged and of course
he has an immediate interest in recovering the
money in favor of the Sheriff the effect of it being to
discharge his debt. Phil 47. n. 52. 2 Newb. 331.

But it has been held that in an action at law
of evidence when the debt justified as an officer. the
taking of it, as the property of A & B. & that the took
a mortgage as the property of A, B was a compulsory with
not to prove the property held jointly. 13 Mass 188.

So also in Equity between A & B. C is not
a compulsory witness to prove himself a tenant in
possession. now to support an ac. the plaintiff must be in poss.
yet in this case the verdict would not be evidence for
or against the witness in a subsequent suit. But if a decree
were had by the Pl. the witness would be ousted of possession

as that substance the the end would not be end
 as in the execution would be upored as his. He
 respects has a direct intent to defeat the
 recovery, & yet by his testimony in this case implies
 himself to an act of God and for many people.
 if he testifies that he is imp. and in either case
 his declaration in Ct. would be evidence as to him.
 still his liability to be ousted is not to be counter-
 balanced by the remote effect of his liability to a
 subsequent suit Phil 48. n. 5 Taunt. 183. 12 John 275.
 12 John 246.

For other cases vide Phil 50, 53. where the
 witness would be intended in the event yet the second would
 be no reason why.

As the witness has an interest yet
 if it is balanced so that he stands in point of interest
 indifferent he is competent to testify for either party.
 the same of the recovery the case as to him comes.
 when the witness is balanced he has no motive to
 conceal the truth or tell a falsehood. When so far
 as his own private advantage or disadvantage is
 concerned it is immaterial which party suc-
 ceeds Phil 53, Peck 154, Dela 129, 4 Allen 196, 476.

Thus in an indictment as a County for not repairing
 a bridge for not repairing a bridge the inhabitants of the
 County are competent ^{to testify} for either side as to the neglect
 of the repair. Their interest is supposed to be balanced
 but equally intended to have sufficient motive
 as to avoid the expense of repairing them. Peck 354, 366
 307 or 307.

So also the acceptance of a bribe is competent in an

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The demand to prove that he has no effects and thus
dispense with the necessity of notice to the demandor. Now
as a general rule the burden on the demandor as to this
must be legal notice to the demandor, but if the demandor
has no effect in the hands of the demandor, notice need
not be given. Now if in an action by the holder on the demand
the holder wishes to prove the probability of dispensing with notice
may occur upon the exception, the burden is that the
notice is believed. Because he is liable to the holder
the the latter must in this case as the demandor. If
the Jury mind the acceptance is liable also to the
demandor if he had effects. & consequently it is indistinct
showing whether the J. does or does not mind. It
is either event he is liable if he had effects. Peck 184.
184 332. 1 Wharton Law. 272.

In a dispute of money paid to the use of
that owner the master is a complete witness to prove
that he received the money from the J. for the use of the
debt. His liability is no greater in one case than in
the other. For if he has received the money and not paid
it over he is liable to either the other party or the
case may be. and if he has paid it over he is
not liable to either. This is a clear case of a contract
balanced. Phil 53. 102, 7 J. 481. n. c. 1 Camb. 407. 2 Cases
17. Peck 165. 1 Talbot 27.

There are however notwithstanding the general rule, certain
exceptions in which a

Party to a Suit is allowed to testify.

and they proceed upon the ground of a supposed necessity
of justice.

What is the case of Winter 13. East 1. newly cited

Evidence,

The State of New York. The Pff who is the party robbed.
 is an ac as the Hundred is comp^d to prove the robbery
 and the amt. lost. on default of other proof, say the
 Books. This is a clear case of an intent in the
act. This doctrine is based upon the supposition
 that it is improper for the Pff to testify otherwise and
 should be rejected. 2 Roll 685-6. Phil 184.

On the other hand the party robbed is (and is)
 competent to prove other facts which in common
 presumption may be proved by other evidence
 as ^{that} the place where the party is robbed is within
 the hundred sued. See 150 n. Phil 58. Hard. 83.

It is furthermore stated that on a both of the
 parties to a suit are allowed to testify by the force of law
 that previous. Thus by state of Conn^t both parties
 are allowed to testify in Book Debt in Accord.
 the Pff. in case of Secret Affairs in promotion
 under the State of Bastardy. The Dep. on prom-
 is relating to his paper in the right manner to
 except him. In action's best by evidence of Con-
tempt money. In Guilty suits for Theft
 the Pff. is allowed to prove the ^{fact} identity of the property.
 So also, the dep. is a list of Secret Affairs
 found in process of Mole's attack. By the con-
 tin of London they have a similar rule & (that)

And it has been decided in this State that
 in a process of Mole's attack. The ascendant's
 doctrine is a com^d principle to prove that the effect
 in the hands of the guardian are not the property of
 the property of the ascending doctrine, but that the
 property belongs to a stranger. 2 Conn R 247.

^{evidence.}
Interest of Agents or Servants respecting their competency
Upon a number of cases it is said that agents or servants
becoming interested in the ordinary or regular course
of their employment are competent witnesses for their principals
wholes or masters and yet they are interested in
the result for if a recovery is had by their principals
a master. The result may be given as there is a
substantial fact as the case may be, this rule
is found in respecting a commission expected for the
sale of land and goes out of the common usage
of business. If they were held incompetent it
is evident in several cases there is no doubt as to
giving to him the facts Peck 151, Phil 845, Peck 164-7.
171.

Thus, a factor is a competent witness to prove
a sale of goods by him for his principal as to
charge the vendee, and this tho he is entitled
to a commission on the goods but being entitled
to a commission he is necessarily interested in sup-
porting a recovery on the vendee for if no recovery,
no commission. Phil 94, 3 Tris 40, 1 Alk. 248. 2
H. Blk 590. Buller 289, 1 John Cas. 408. 2 id 60. 2 John
R 189, Peck 165.

And as a general rule any one who contracts for another
under a power of attorney is an agent within the
rule Phil 94. 2 Hen Blk 591.

Upon the four principles an agent is competent
to prove in favor of his principal the payment of money,
a delivery of goods, the his evidence goes to discharge
himself from liability to the principal, Peck 151-2
164-5. Peck Cas 129, Phil 94. 4 Y.B. 589, 590. 2 Rep 509, 3 id 48.

Evidence.

Q. The other head of the acts of the servant are not done according to the ordinary course of employment and claim to have been done without the consent of his master in violation of his duty. ^{his master's duty} for in such case the act is within the letter a reason of the rule Phil 95-6. Phil 289.

Thus in an action brought by the plaintiff to recover back money paid out for illegal purposes & which has been demanded by the servant the servant is not a competent witness to disprove the act, but released by his master, and if there is a recovery, as the principle the servant is liable to him for the amount of this judgment intended in the event and not being within the reason of the rule is excluded. Phil 95-6. Cook 164. n. Cook 198.

When the same good reason as in the master for an injury done by the neglect of his servant. The servant is not a competent witness for the master for he is liable to indemnify his master if the plaintiff prevails & by the supposition the act is not done in the regular course of employment. Phil 95-6 & 7/6589. 1 Rep. 338. 1 Camb. 251.

An agent then competent to testify under this rule is also competent to prove his own authority. Phil 96 n. 2. Dallas. 300.

But it is said if he acts under a written authority he cannot prove the content of it without producing it & this upon the supposition that the instrument is the best evidence. Phil 96. n. 2. Dallas 240. 1 Rep. 460. n. 1. 1 McCop. 483.

An agent who has purchased goods in

his own name testifies for the vendor that he purchased
 there as agent for the defendant. He cannot be personally
 bound he must pay if the debt is not satisfied.
 he therefore has a direct interest to subvert the debt
 & thus excuse himself from responsibility, Phil 98.
 3 Caust. 317. *Litchfield v. 18th Nov. 1824. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.*

It was formerly supposed that if a witness, without
 having under an Honorary Obligation the law
 obliged him to swear, he was not bound to swear,
 for that point, as when a witness swears of the truth
 of the bill paid, do you not expect to examine him
 for the court? and he answered in the affirmative he
 was not bound. This rule proceeded upon the sup-
 position that there was a direct interest in the
 money as being as the he had a legal disability, Peake
 157 Stump 129. Phil 41. 2. 1 Caust. 140 Edw Dig 707.

This rule however has now been denied
 and according to the better opinion occurs, not
 to be bound. That the obligation is not even gone
 to his credit Phil 141. 2. 1 Caust. 145. 9 John 219

The latter rule, to wit that it goes to his credit.
 seems to be founded in principle for the same
 honor which would prompt the witness to swear, it
 would seem to lead him to speak the truth. vide
 however 5 Allap 518. 8 John 428. 1 Dallas 52. 2 ib 55. 1
 Connell 16 147. When one swears to an affidavit he
 binds the witness.

In a late case before the Court in a Ct of
 Admiralty, adopted the following rule and as
 having been well settled

If the witness says he merely expects a share

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in the hands of the captain of the condemned ship
place he is competent. But if he says he
believes himing to have a legal claim to it
there he is incompetent. The his opinion may
be erroneous. For in the latter case he acts
under an impression of interest, and as such
or that he was legally interested 5 Robinson, Admiralty
14, 344. n.

This interest which excludes a witness it is
said must have existed at the time when
the act or the fact in question took place &
had accrued afterwards by operation of law or by
the act of the party who offers him as a witness.
Peck 137. 185. Phil 100. In an interest subsequent to
the act or fact in question required by the witness
and act without that of the party offering him does not
or has been said disqualifying him. The reason is
when the ends of justice a witness may, it is every
case deprive the party of his testimony and the
opposite party might construe as it. This is
held to be the policy of the law and as the
rights of parties. Peck, 158. 185. Thayer 586. 3 T. 27.
33-4. 37. 3 Johns. Cas. 237. Phil 100. 3 Com. 266.

Thus: If a witness to a bond or other contract makes
a bet that the party claiming will recover. He is
still a competent witness for the party. He is not only
competent but in some cases he is compelled to tes-
tify and yet the witness is interested in the event
supporting the wager a legal one because he will
to claim the money deposited upon the issue that the
party claims. He has therefore a direct interest. For the
fund would be paid for him.

Perke 158. Buller 290. Phil 100.

In summary of the same case is a plaintiff
a slave being to the commission of crime
by the law and says a wage that he will be con-
sidered the former is correct. I am compelled to rely
in support of the present and for the same reason
as given under the last example and in this
one he is also interested. *Thur, 18, 1 de Mol 145, 3 Leas.*
152.

It has been suggested in the two last cases
and I think not without reason that the latter
is not intended in the case for that some wages
would be held to be void and if this were doubtless
he is not interested. I shall not here go into the
question of legal & illegal wages, but this is the prin-
ciple of a sound elementary principle. The above rule is
very prejudicial to the justice & just administration
of justice.

Case of Collier v

Lykes. In 16 East 150. which was an action
under a wage made in the year 1802. When
the Def. is consideration of a 100 guineas second. He
said to pay 1 guinea for every day that Bonaparte
lived. The deft after paying the guinea daily for a
month or more, & then refused to pay any more an
action was brought and the court decided as the Def.

In wages I refer you to them more than justice
seems. An analogy to the slave case. When a
slave has been found to be a slave a policy
afterwards becomes an independent himself it may

Evidence.

by Sir Rogers & Associates that it was ^{not} intended to be taken as
 evidence at the trial even if the latter had been
 interested in the case. It is then it was held by
 all of the Ct that the interest of the latter was not
 in the case but in the result, but it was the
 opinion of these two judges that had it been intended
 in the case he would be liable for it. 3 N.B. 27.

I remark that it was said to be the rule, I now
 remark that it seems very questionable whether
 this rule is not laid down in too general terms
 and whether the opinion expressed by these two judges
 in the case can be law. Indeed it seems doubtful
 whether the rule extends to any other cases than
 those in which the act creating the interest is
 with gross fraud, i.e. intended to deprive the party
 of the benefit of the law, or merely gratuitous and idle
 as in the case of a wife. For if a person is reg-
 istered of a business in which others are concerned
 and engaged in the regular course of business &
 bona fide becomes interested in the case of the
 said carrying out of it he is bound by the law
 of the court in case? Thus when one undertakes
 who has had his loss upon the agent, that the
 principal should defend it his act is not undertaken
 in the same spirit as here. The court held him
 not competent. Then you will see that the latter
 was interested in the case for if the off found the
 business would have a right of action to recover back the
 money which he paid on the policy by force of
 the agreement made between them, and it is equally
 true that the interest in this case becomes interested by

by his own act, without the party's concurrence calling
him & after the act, ^{his support} This qualified action of the con-
vent had been proved, upon this principle, that
no person ^{there} could be proved in his ordinary agree-
ment, with ^{any} other all the facts arising out of the
business of a third person and previous similar actions
in his testimony.

Phi 101-2. 1 Male & 2 juv.

B Camp 380.

When a noun phrase given as a dependent phrase
unintended, afterwards becomes intent. By operation of
and his deposition is admissible in Chz.

So too it is a compendium in that it is the capitulum becomes a part as the hair on the Exc. of the original part. 2 for 899 10 p. 11. 284. 2 c. 11. 615.

But the rule is otherwise at Law if he becomes a party. See deposition in the case, stated to and sent to a committee. Gal. 286. June 10. Ex. 23/56.

As it is true that in these cases in which a witness
cannot by any means be entirely ^{independently} disposed of by a party of his ter-
taining so on the other hand he cannot by a corresponding
an opposite interest, peculiar himself from testifying
on either side he is not only comp. testifying but
he is compelled to testify ^{thus}: If the subscribing
entirely to an instrument becomes, due to the
death, he is compelled to testify to the occurrence. His
interest notwithstanding. It does not lie in his mouth
to say that the effect of this testimony would subject him
to civil suit for the same is that he has voluntarily
pledged himself in this particular. Wake 1857

Evidence.

When a witness attests in the court is called upon a witness by operation of Law he is obliged to testify in pursuit of his oath and he is not compelled to testify in it. The reason is that it is not the act of himself but the act of Law.

Ed. An. Hen. appears becomingly acquainted with facts relating to his ancestors till afterwards proceeds to the inheritance. He is neither compelled nor compelled to testify. The promise to the descent being that he is both comp. & com. comp. but after the descent can he become interested in supporting his own title.

Upon the same principle it has been ^{held} that a witness who subsequently becomes an Ex. in a suit is obliged to testify for by the rules of Law being executed in deed he is the party on the record created by the act of Law. Phil 362, 3 n. 1 P. Wms 289, 3. 4 B. 372, 2 Port 183, 3 Port 7.

So also if the witness in the court has been called by the act a consequence of the party offering the witness he is obliged. The reason is that it is not comp. for a party who has created a dispute to the act creating the witness to insist that the legal disqualification shall not result from it. He is presumed to know the legal consequences of his own act & thus to have waived the right to examine the witness. Thus the witness to an unimpaired becomes liable to the obligation he comes testifying for Law, he is interested in the suit, but that interest is created by the act of the party calling him.

Upon the same principle of the subscribing parties, because the law is a rule of one of the parties is the object. He who is an adversary party. For within case the witness is intended and is intended is a voluntary act the witness is created by his own act, and of course with the concurrence of the party offering the witness. Per No 157. 185. 3 Johns Cas 237. 2 East 153.

As the distinction upon this subject is of importance I prepare the evidence there by way of general rule.

I. An intent acquired subsequent to the act a fact in question by operation of law disqualifies on the one side and privileges on the other.

II The same intent acquired by the act of the party offering the witness disqualifies him.

III If acquired by the act of the opposite party a law concurrence the witness is still competent.

IV. If acquired by the act of the witness whether the concurrence of either party then if the act is done prior to the regular course of business, it is disqualifying, but if procured as an emergency wanted transaction or a wager the witness is competent.

It is a general rule that the intent which goes to the competency of the witness must continue so at the time of trial. Hence it follows that a removal of it before the time of trial regarding either the competency of the witness or that for the same reason that if removed he is under no disqualification any longer for the purpose of trial.

Evidence.

Dec 158. Long 139. W. 87.8 / Feb. Co. 270, & Feb. 10377
1 Dec 73.

[illegible]

The 1st Can is that of Amos & Sonm^y 1746
in which the Ch. of J. Lee preside^y held the lotus in
a dispute. The 1253. This Can was sent to the Exch^y
Church & the Rev^y a dⁿ of theirs among
the judges was concerned.

The second can was dec'd by Lie Hardist in the
he led the entire comp^y. this evening you,

The 3^d Cone of Burn 414 The celebrated cone of Minda
I Chetwisch 1757 the rain more after a hot period - was
but again a hill made before the start.

4th Can. Amsterdam is Kery, in which the
writing was led ^{but sent & hand signed} as the opinion of a L. Can. Dr.
that of Mott, Dec 1 Day 41. when the case is removed out-
-letting of a ^{difference} in ^{the} ^{case}.

These conflicting opinions led to the adoption of the
Res. & Res. 25 Jan 2^d which provides that a legacy in
deed to a religious society is void if the
society is unable to prove the rule as to the endow
Nov. 9, 1922-3, Book 160, p.

Evidence.

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The Stat. in the same manner as to Legates who have been paid a reward their intent is law referred to receive property tendered.

And by the same Stat. Relating to the taken and made Comp? Notwithstanding the Stat. debts are charged by the rule, as land. Pow. 2. 122. 3. 133. 4.

We have a similar Stat. in Conn. for the particular provision of which reference may be had to the Stat. on this is not precisely as the Eng. Stat. Stat. Court. Nov 1821. 199. By the Stat. a subscribing witness being a Legate dies before the testimony is taken and a solemnizing the entry is a corrupt witness. Peck 160. n.

Proof of his solicitation is to be made as in the case when the subscribing witness is dead.

I have said that the necessity of a witness must continue till the time. It follows from this rule that a witness to a deed the witness intended as the nature of the case may require or may the means by which he is directed of his intent at the time of his examination will entitle his Com. Petition. Phil 97-8. Peck 158. Doug 139.

Now in the case of forgery of the person whom the instrument purports to bind has been released from the claim by the party who is entitled to receive upon it if genuine he is entitled to now he has no intent being released. Phil 98. Peck 178. 184. 255. Peck 169. n.

So also in the case of the execution of a note or the receipt and endorsement being released is a corrupt witness for the Stat. for use his intention in the event is considered. Id. 73.

paper committed to him by a client in another cause Phil 103. n. 2. Illap 370, 3 Day 499.

It is said however in a late case to have been ruled that in such case he might to have perused the paper & that the Ct will interfere if it appears not to be read. I suppose that the Ct will judge whether it should be read or not Phil 103. n. C. 1 Holt 4 P. Rep. 240.

This gen rule excluding confessions and letters the defendant a contrary to which the communication relates is at an end: hold. Peck 178. Phil 103. 4 Y. B. 759, 760 2 Cam. 578. Eub Dig 695.

Now Can he testify in our case to fact thus disclosed to him in another suit between other parties. viz. preced. authorities

Then rules are founded upon the principle not of the confessions but of the client. Hence as a gen rule he is not permitted to testify without the consent of the client, and the obligation of secrecy never ceases. Phil 103 1 Eub Dig 695. 4 Y. B. 759.

And therefore conversations of the atty with third persons regarding facts communicated to him confidentially & professionally by the client cannot be proved. If then by inadvertence a design an atty should disclose such facts, the person who heard it cannot testify to it, for as the atty himself could not testify and as the person is the friend of the client a fortiori a person who has heard them cannot testify to them. Phil 103. n. 2 Hacky 239.

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The same rule holds as to an Inter-pleader between the party & his counsel for as he is the organ of communication between the Council & his client. It is under the same obligation of secrecy, Peck 178. Phil 103. Peck Cas 77. & 4 Gb. 756.

This privilege of the client is confined to such communications as are made respecting professional business, and during the relation of atty & client. 3 John Cas. 178. 1 McCall 244. 1 Currier Rep. 157. Hence an atty. by prospect in but not retained as such is not within the rule. The lawyer here been consulted confidentially for & thus can the relation does not exist, because no retention. Phil 103. Peck 169. 170. 4 Gb. 753. 760.

Now it has been held that the thrust of an atty is not within the rule because no confidence is reposed in him by the client. He being not a professional man, nor is there any supposed necessity that there should be such confidence. Phil 103. n. D. 1 Peter Rep. 356.

As: this privilege is the privilege of the client it follows that if the client wishes his privilege the atty is allowed and is can sell out to testify. Phil 103.

And a person who was confidentially consulted under the impression of his being an atty. when he was not, has been held can be called to disclose the facts disclosed to him. Phil 103. 6, Bb. 113.

So also it has been decided that if the client after the relation of atty & client had ceased chose to volunteer any communications after the relation

has been to the person who has his atty. called. They may in relation be the same, yet the atty. would be compellable to testify in such case.

If however the relation (however persons to whom been drawn out by another for the purpose of being used in evidence is right now, it is said, to be examined 1040 Phil n. a. 13 John. 493.

And it is said further that where all evidence by an atty. is allowed to make them, to a the advantage, may be proved by a third person who heard them the word by the atty. himself Phil 103-4, 2 Camp. 10. This principle extends only to the three cases of Council, Solicitor, & atty. - It follows therefore that Physicians & Surgeons are compellable to disclose information required in consequence of their professional character, Phil 104, 4 2 B. 759 Peck. Cas. 7, Peck. Co. 180.

This rule has been excepted by some eminent judges but it is the law.

So also a Sonnet's Oath to whom confession has been made according to the practice of the Roman Catholic Church is compellable to testify, Peck. 180. Peck. Cas. 7, Phil 105, n. 1 de Calz. 253. A fortiori this rule holds. This as to private confidential communications to a friend is not protected, Peck. 180, Phil 104, n. 1 B. & P. 284. And it has been said that a clerk to the Commission of Yox. who had taken oath not to disclose what he should learn as a clerk was compellable to disclose. This decision is perceived on the ground that as just on oath there is an implied exception as to evidence required

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in *Ch* of Justice. That the oath extends only to voluntary
a extrajudicial disclosures. *Phic* 104 3 *Camp* 337.

I have shown that this rule is confined to conf-
idential communications made when the relation is continued.

Now an *Atty* as to a party, in common law, he
is bound as his client as to facts known to him before
he was retained or adopted as such. *Phic* 105, 1 *Booth*,
197 10 *Wood* 40. *Bul* 284, 4 *St. R.* 589. *Powell* 279, 1 *W.* 63.
2d. 185. The rule is no longer, but it is not can ac-
quire his knowledge by the relation of his client the
disclosure made is no longer confidential,
to allow. When he has executed an instrument
to which his client is a party he may be examined
as to the execution of it, for the act of attestation is
not done by him as *Atty*, but as a witness selected
by the parties. *Phic* 105, *Pease* 178.9, *Pease* Cor 108, 5 *Booth*,
Cow 85-6, 4 *Booth* 235. It also if he ever presents when his
client comes to an answer in *Ch* he may be ex-
amined as to the facts of the latter swearing in an
indict^t. for perjury. For this fact is not one
communicated to him in confidence. *Pease* 178.
Phic 105, *Bull* 284 *Cow* 846, *Ind.* *Carton* *Stea* 1122.

So in *Gen* he may be examined as to
any collateral facts which he knows or might have
known without any intention of giving his client,
or in relation to the fact of an execution of a deed, and
a rule in which his client is interested and where
his knowledge is not derived from any disclosure
by his client. *Phic* 105, 1 *Booth* 187, *Bul* 284.

So in *dec* or *con* the *Suff.* *Atty* has been
admitted to him for his own knowledge that he (but)

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had no meaning Phil 105. Peck 108.

So after an answer on a plea, not had been
compromised the sufficiency of the plea, that the note
had been given without consideration. The C. of Kts
held the plea was compellable to admit the fact,
and the return doubtless was that an atty he
was then "functus officio" as to this fact. The
relation of atty and client as to the declaration
made there, did not exist, Phil 105-6, 4 G. 432,
Peck 177.

It has been held that a person who puts his
name to an instrument to put a sanction is
not a comp. party, its invalidity, he is con-
sidered as precluded by a waiver of objection. This
rule appears to have been first adopted in the
case of Patton & Shelly 1 G. 296. And it was
established & confirmed by Lord Mansfield who was
the author & founder of the Law Merchant to afford a ge-
neral protection to the bona fide holder of negotiable
instruments so that their circulation might not be
impeded, Phil 33, Peck 181, 3 Peck 1244, 1 B. & K. 365.

Soon afterwards however the same rule was recognized
in a limited extent only as applying to negotiable instruments
only 3 G. 34, Peck 108, 6, 40, 52, 1 B. & K. 298, Phil 34, n.

Thus in an action by the endorser on the accept of a
note the endorser was held to be comp. to introduce
the C. of Kts. proving it was given and received by the
endorser. The holder was held comp. to prove receipt
from the other and not as the instrument originally
issued. Thus he was held to prove payment, vide
Phil 34, n. Billings 27, 11 G. 128.

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But in the case of Jordan & Lashbrook the case
in *Nelson & Tully* was denied, and of course the rule of
Lashbrook's case is now not law in Eng? 7 H.K. 601.

Peckham Case, 117, 1 Rep. 176, 4 Term. 464.

In the *De Motu*, the current of authority is
against admitting a party to a neg. witness on a
motion to prove it deprecating void. 3 Allaz 27.
565. 4 id 156. 5 H. 6 id 449, 7 id 179, 10 id 502. 15 id 223.
In New York vid. 1 Case 258, 267. 3 John Case. 135.
236. 2 Johnb 165. 15 id 270. 16 id 70. 17 id 176. In Penn.
vid. 2 Dallas 174. 239. 2 Boring 154. In S. Carolina
2 Bay 93. Vid. the dictum of Chan in *J. O. T.* 1 Case
201. In Virginia a dictum 1 Hemmings & Mansford. 154.
vid. in Connec^t 1 Case 16 260. 1 Day 17. 301. in the
former case 1 Conn^t. the Suprem Ct held that the case
of Jordan and Lashbrook is law here.

I would observe that this rule is adopted in
the *Case in Eng^d* I consider to be the correct one.
for the objection goes rather to the proof of the fact
at all than to the incompetency of the witness.

Thus much of relationship incompetency.

An objection may be taken to the competency of a witness
by examining him before he is sworn in chief respect.
vid. *Case*. by the testimony of other witnesses showing that
such witness is incompetent. as upon his own exam-
ination was sworn in chief. *Peckham Case* 116. Phil 76. 50. 10 Allaz 173.
1 H.K. 119.

Formerly the objection could be taken only in one of
the two first-mentioned cases. after he was sworn in chief

The objection to his competency was decided on coming to late
 in answer. But as the practice now is, the objection may
 be taken after he has been sworn and examined & charged
 and indeed when it is discovered at any time during
 the trial that he is incompetent he may be rejected.
 Peck 1867. Phil 70. 204-5. 1 St. 720. 1 Sup 37. The reason of the
 relaxation of the old rule is that his incompetency
 may not at first be suspected and it is more
 convenient for the Court than the objection be taken ac-
 cording to the new rule and this in your view seems
 and in *Ex 3* the case is (the same is) the same. If his in-
 competency is discovered at any stage of the case his competency
 may be supposed. Phil 70. 6. n. a. 2 St. 463. 5 St. 523.
 Upon the voir dire, no question is proper except as to
 as to the competency of the witness. There must be
 relation merely to his credit and circumstantial under
 that oath. and the reason is that the sole object of exa-
 mining a witness under this oath is being to determine
 as to his credit. Phil 147. 200.

Upon his examination under the voir dire a witness
 may be interrogated concerning statements made by
 him or other persons creating an interest in him in
 those proceedings there, and this notwithstanding the gen-
 eral opening written notice to be given to produce evi-
 dence before hand under 7 is omitted and admitted.
 for the party objecting to the competency is supposed to
 know what writing may be read upon or in or of
 can not be exposed to him. Peck 187. 2 St. 433.

An objection arising from the witness answers on the
 voir dire may be removed by other answers under other
 same oath. How if a witness under the voir dire can

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- paper having been introduced, he may upon the same state testifies his complicity, by the same testimony without producing the deed of the the purpose of showing his present non-interest.

When the same person is that the, formerly a member of a corporation which is a party he has been disfranchised, & the same is that as the party objecting makes the witness his own, for the purpose of rendering him incompetent he cannot object to such answer or demand as himself and as the objection is ruled by the testimony of the witness himself it may be removed by the same testimony. *Peake, 187, Phil 47. Peake Cas 218, 15 East, 57.*

But it is otherwise of his original interest arising by other witnesses in this case the deed or testimony excluding his competency cannot be produced and for the reason that in this case the party objecting does not make the witness his own for the purpose of making him incompetent. *Peake, 187.*

The declaration of the witness having been that that he is interested is not evidence to exclude him, if it were he might by a full and, without any, wholly dependent a party of his testimony, and this too without any violation for the falsehood. *Phil 26. n. d. 5 All. 261.*

But it has been held that proof of such a declaration made by a party opposing his testimony will exclude him. *Phil 26. n. d. 8 All. 487.*

If the party objecting to a witness examine him upon (sup.
a) the voir dire he is bound by his oath and cannot of
tenses call other witnesses to prove his incompetency
and this rule holds & conversely, i.e. if he calls witnesses
to prove his incompetency and fails he cannot then ex-
amine him upon the voir dire for the purpose of pro-
ving his incompetency. Phil 97. n. c. 1844 292. 1 McCop 219.
Peck 186, 10 Allen 193.

And it has been held that the rule
is the same when the witness has been examined
as to his intentions under the gen. oath and that
it applies also to depositions taken before a mag-
istrate, i.e. if at the time of taking the deposition
the witness is examined on the voir dire. At the
time of trial this cannot be disputed by other witnesses.
3 Day 214.

But when the witness is examined upon the
voir dire the party objecting may introduce other
evidence to prove his intent for the purpose of
discrediting him but not to exculpate him. Peck 186

The ordinary mode of

Compelling the Attendance of Witnesses

is by "^{a writ} subpoena ad testificandum" Peck 191. Phil 2.

And if the witness is in possession of any deed or
writing which is material ^{shall be} necessary at the time he may
be compelled by a specific claim in the writ called
"a duces tecum" to bring it into Ct. the writ is
then called a writ "upon duces tecum" Peck 191. Phil 12.

But the witness is bound and is entitled
to bring the writing into Ct. yet the question with
the party is entitled to him is pending in order every
it to be submitted to the Judge. Phil 12. 9 Cas. 485

1 Es. 405/4 John 396.

The latter is never considered to show any writing which is evidence of his own title or objection against himself to any claim for or on it to the furthest evidence to himself, or to expose his own private writings for the benefit of strangers. *Howe* 191. 197. *Apex* 38-9. 1 Es. Cas 405. 414 43.
English to the Mode of serving the Subpoena a rule
Peake 192. *Phil* 4. *Es Cas* 522. 540. 540d.

This subpoena must be served within a reasonable time the no precise period is fixed *Peake* 192. *How* 510. 2 *W. & W.* 807.

A witness the subpoenaed is not bound to attend in civil cases unless a summons summons to depose his expenses in going to, remaining at, and returning from, the place of trial, is tendered to him, or unless he waives it. *Peake* 192. *How* 1150. *Phil* 8.

If a witness does not attend a tender of a reasonable sum for his expenses (and the latter neglects to appear he is liable in *Ex.* either to answer as to the cause for damages, or an attachment for contempt, or an action in the *Stat* 5 *Eliz* for a penalty and also for a further sum to be recovered by the party aggrieved *How* 540. *Peake* 192. *Phil* 4. 1 *How* 510. 2 *How* 810. 1054. 1150. *Co. & P.* 846. 3. *Will* 1329.

In *Ex.* however the action for further compensation under this *Stat.* does not lie unless the assent has been obtained previously by the *Pl.* and of which the judge is satisfied. The *Stat* of *Eliz* expressly reserves the assent to the discretion of the judge of the *Ch.* and of which the judge is satisfied. But this is construed to mean the *Pl.* and of which the judge is satisfied not the Judge *Phil* 2. *How* 535.

But after the agreement, is legally made "sett" will be for it, in court.

Notwithstanding, however these several considerations which then by & laws have provided the more usual mode is by Attach^t, under which the witness may be seized & imprisoned till he pays not only the fine but the damages sustained by the party Doct. 540.

When the witness appears he is not in general obliged to testify till the money to which he is entitled is paid or tendered to him, Phil. 3. Deak. 192. Tho. 150. 13 East 162. cc. 1 Blk R. 36. 1 W Blk 49. 3 Blk Com. 369. Phil 805.

And if he attests according to the exigencies in the subpoena and gives evidence without ^{the} money being tendered or paid he may recover his expenses of the party by whom he was compelled by cc. Deak. 192.

And upon principle the rule I should suppose would be the same if he attended, whether he was called to testify or not i.e. if he attended according to the exigencies of the subpoena.

If a person (warranted) for a witness is wanted who is in custody ^{of some authority}, or is serving a term of a Prison and under an Officer who refuses to allow his attendance a subpoena ^{in such cases} being ineffective, the process is by writ of "habeas corpus ad testificandum" by this process he is returned in custody and returned to his former situation, 192-3 of Deak., Phil 9. Comp 192. 3 Blk 1446.

When a witness is taken from a foreign County after the commencement of a Suit a bill of exchange is drawn from him for the purpose of this writ, his disbursements during his coming and return & subsisting expenses at the time of being detained in Eng^d in the taxes of Court, Phil. 3. 4 Yanta 55. 699. Gib. 88. 1 W Blk m. 563.

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If the witness is a prisoner of War & unable to
 compare his attendance ^{cannot be had} without the consent of the
 Rec. Court & Society of War, the reason is that be-
 ing a prisoner of War he is subject to the Govt. Authority.
 It has been held in some cases however that by con-
 sent he may be examined by interrogatories without being
 brought up, Phil 10 Meade 493. Doug 418.

In Civil Cases a witness may be compelled
 with by subpoena, or in being bound in a recogni-
 tance if he refuses to attend without such recogni-
 tance he may be committed for a contempt, Phil 7, 2
 Meade 281.

In Criminal Cases the party accused or a claim-
 ant is entitled to a subpoena, and for the privilege in
 his favor by the Ex. & Law vide Phil 7, 2 Stark 46.

In Civil Cases witnesses are bound to appear
 for the party without any previous tender of money for
 their expenses & by the Civil Law there is no provision
 for reimbursing them. It is now by Stat 27 Geo 2 L 18
 Geo 3: otherwise, Phil 8.

The person of a witness attending the trial
 of a cause is protected from arrest on civil process,
 and this protection covers the time of his going to att-
 ending at, & returning from the place of trial Peck 193,
 Phil 5. 6. 2 Bk. 15. 1113.

And in Gen. it is said that a subpoena is
 not necessary for his protection, if he attends upon a
 private request he is within the privilege - Phil 5. 6.
 8 Me. 536. 7 Mass. 538. 1 Camm 115. vide contra Bull. 264,
 Phil 6 & 7.

The same rule holds of a witness attending from another state. ~~the~~ His attendance could not be compelled 2, Johns R. 274. Phil 6 n.b.

And this question has been extended to a party attending on a deponent under an order of the Court Phil. 6.

A reasonable time is allowed to the witness for going to the place of trial and returning, and in determining what is a reasonable time the practice of the Ct. is liberal Pease 193. 2 Blk R. 1113. 13 East 16 n.a. 4 Ed. 329.

If the (the) witness is allowed in violation of this privilege the Ct. on which he is attending, will on motion discharge him Pease 193.

On a writ of ~~habeas corpus~~ in Connecticut it is determined a witness protected from the Ct. there however is unnecessary, tho it is convenient in producing evidence of the privilege to officers.

In Eng^d when a material witness resides abroad he may under an order of Ct. or on application to a Judge, be examined "de bene g^o" upon interrogatories before commission. This it seems however is not done without the consent of both parties, Phil. 18. 272-3. Ed 60. 2 Y^e 812.

The same course may be adopted with the consent of both parties when the witness is absent from the country, and is at the time of trial the witness is out of the country a his deposition is taken may be read in Ev. but it is not that the evidence is obtained if he is in the Country at the time of trial.

Phil 272. Felt 689. 1 Camp 172-6. Dep. 213 82. 1 Johns R. 163. -147

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If the Abant party will not consent to the examination, the party applying, may file a bill in Eq. and the Ct will put off the time of trial for that purpose until court is held in the winter comes into the County Philo Conn 174 1 B & P. 210.

This however, is not, still not be done to make the party to get up an odious defence as that the Pff is his slave or an alien enemy, Philo 1 B & P. 454.

I observe, says Col Huntington, that the remainder of the notes on this title is an Epilogue of the Stat Laws of this State relative to the method of taking depositions. which I deem not of sufficient importance to be mentioned here. they being Stat provisions of this State besides since these notes were made there have been some alterations in our revised statute, relative to Depositions. vide. Page 525.

End of Evidence

End of Vol.

III.

Statute Regulations relative to Depositions.

The Party or Parties shall have process by Subpoena or Summons, to non attendance, without reasonable excuse the witness shall forfeit \$5 and pay all damages.

It appears every be if and to arrest such witness.

When any witness, in a civil cause, lives out of the State or more than twenty miles from the place of trial, is going to sea, or out of the State, or by any sickness, or being infirmity is unable to travel to Court, or is confined in jail on legal process, his deposition may be taken by a Justice of Peace, provided reasonable notice shall be given to the adverse party or his known agent or attorney, if either of them live within twenty miles of the place of capture, or left at his usual place of abode, to be present at the time of taking such deposition; and depositions may be taken in any other County by a magistrate having power to administer oaths, and the witness shall be cautioned to speak the whole truth, shall be carefully examined, shall subscribe his deposition, and make oath to it before a Justice of the Peace who shall attest the same, certify that the adverse party or his agent was present (if so) or that he was notified, if being living within 20 miles, who shall also certify the reason of taking such deposition, shall read it up, send it to the Court when it is there used, and deliver it if send to the party at whom request it was taken.

The party his attorney or any person, shall not write down up, or dictate any deposition ^{and every deposition} ~~up~~ ^{up}, or shall be returned to the Court immediately by any other hand than that of the Justice of Peace who took it, or the seal of which shall be broken, shall be rejected by the Court.

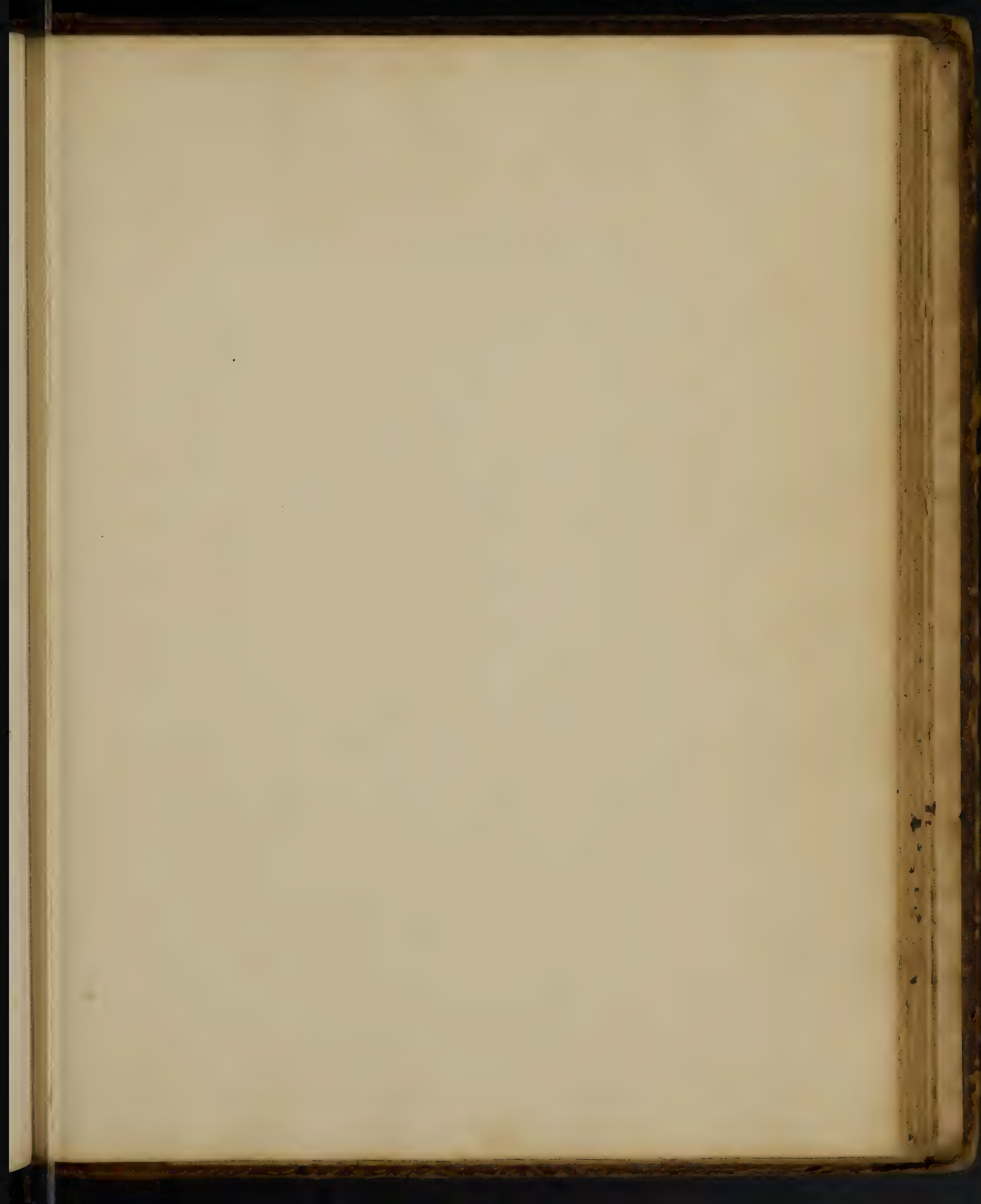
Every Justice of Peace shall have power to give a subpoena upon request in the absence of any witness before him in a civil cause, when he is bound to call, is going out of the State or is living more than 20 miles from the place of trial; or in to take his deposition, the adverse

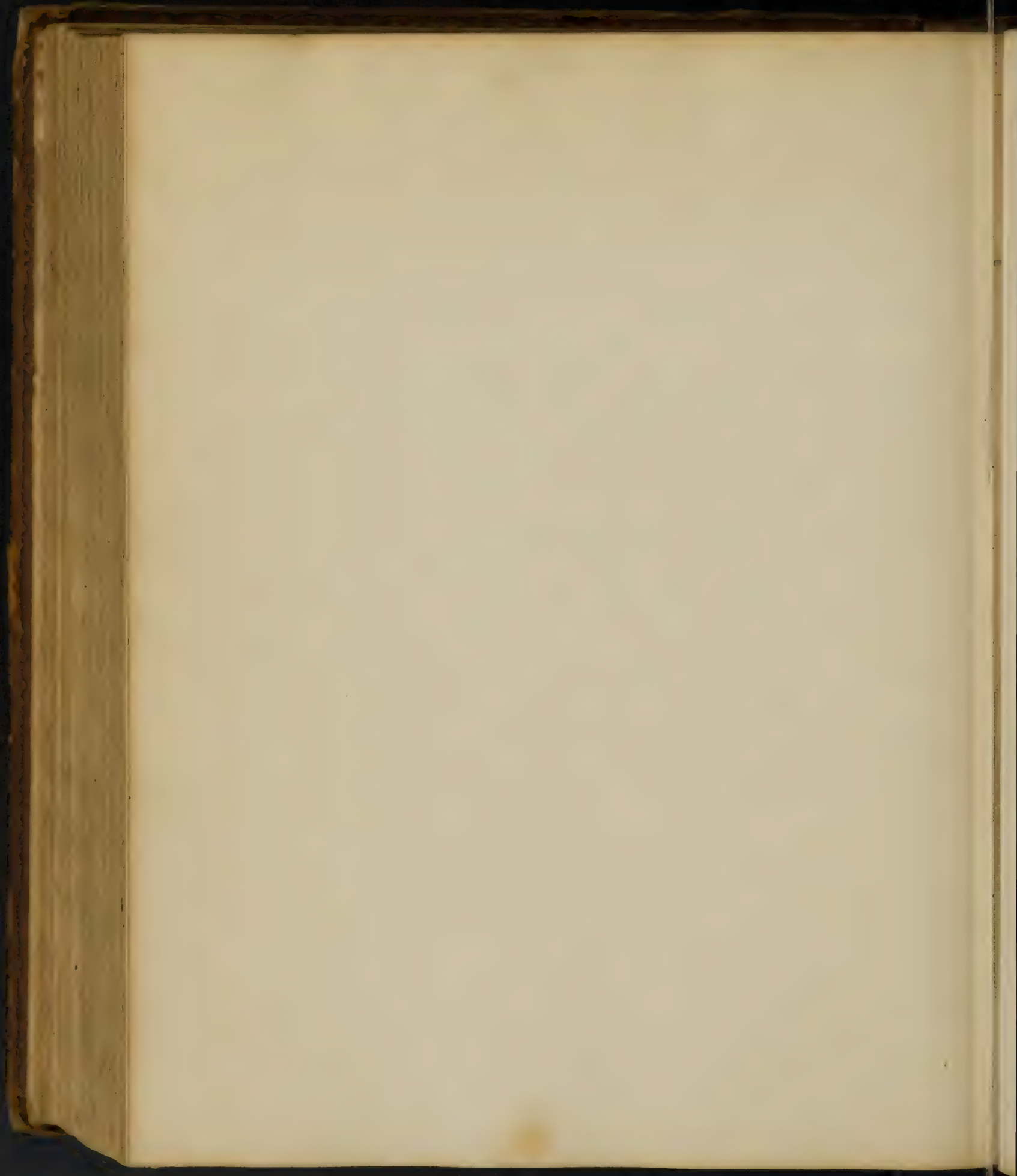
Of Depositions

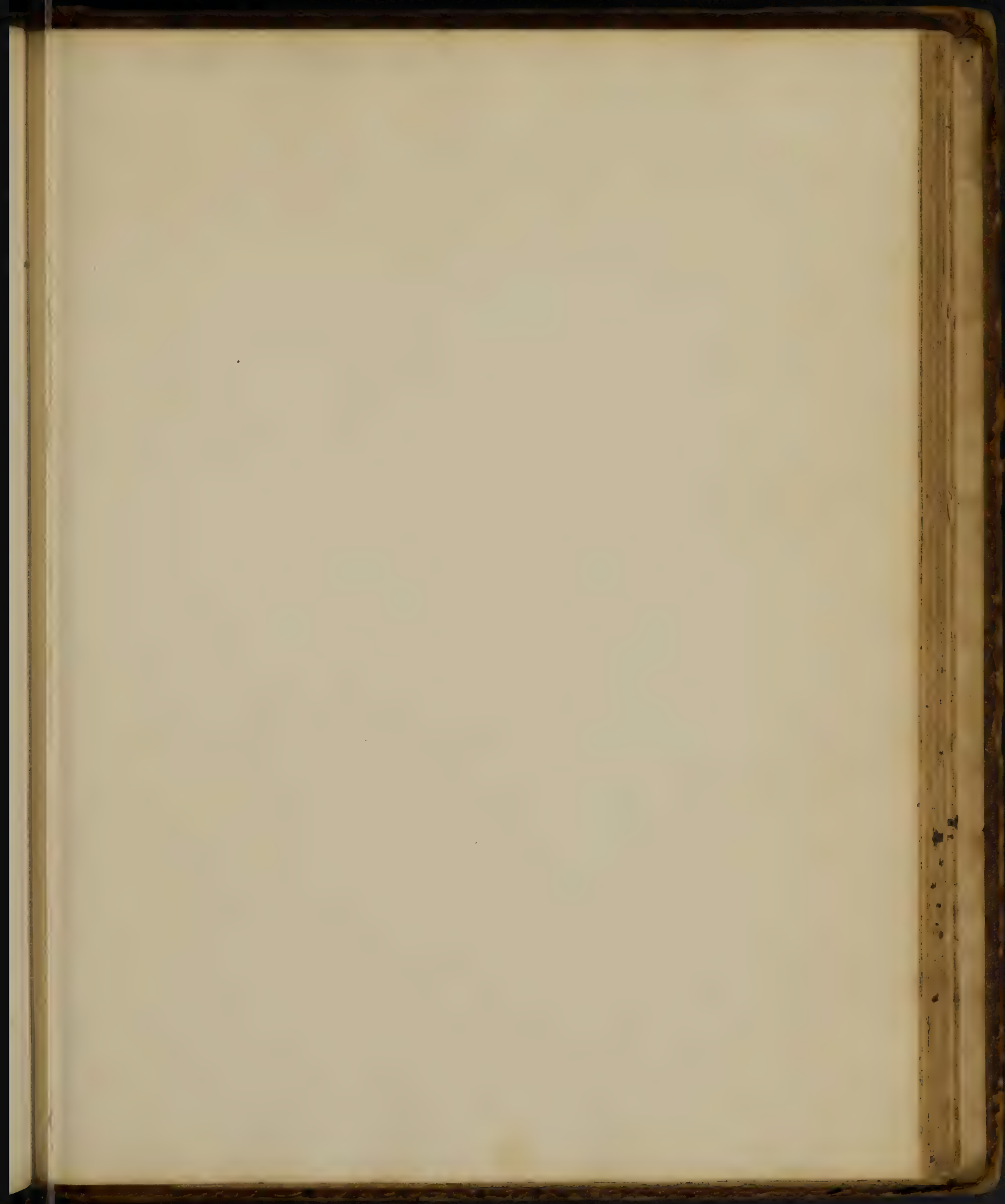
party or his agent being present, or duly notified, if living within twenty miles of the place of caption, and if such witness should refuse to appear, the justice of peace may issue a caption, and cause him to be taken before him, if he should refuse to give his deposition. The Justice of the Peace may commit him to prison, like he will commit, and in like manner depositions may be taken in this State, of witnesses, to be used as evidence, in a suit pending in any Court of Judicature in any State of the United States on application of either of the parties of said suit.

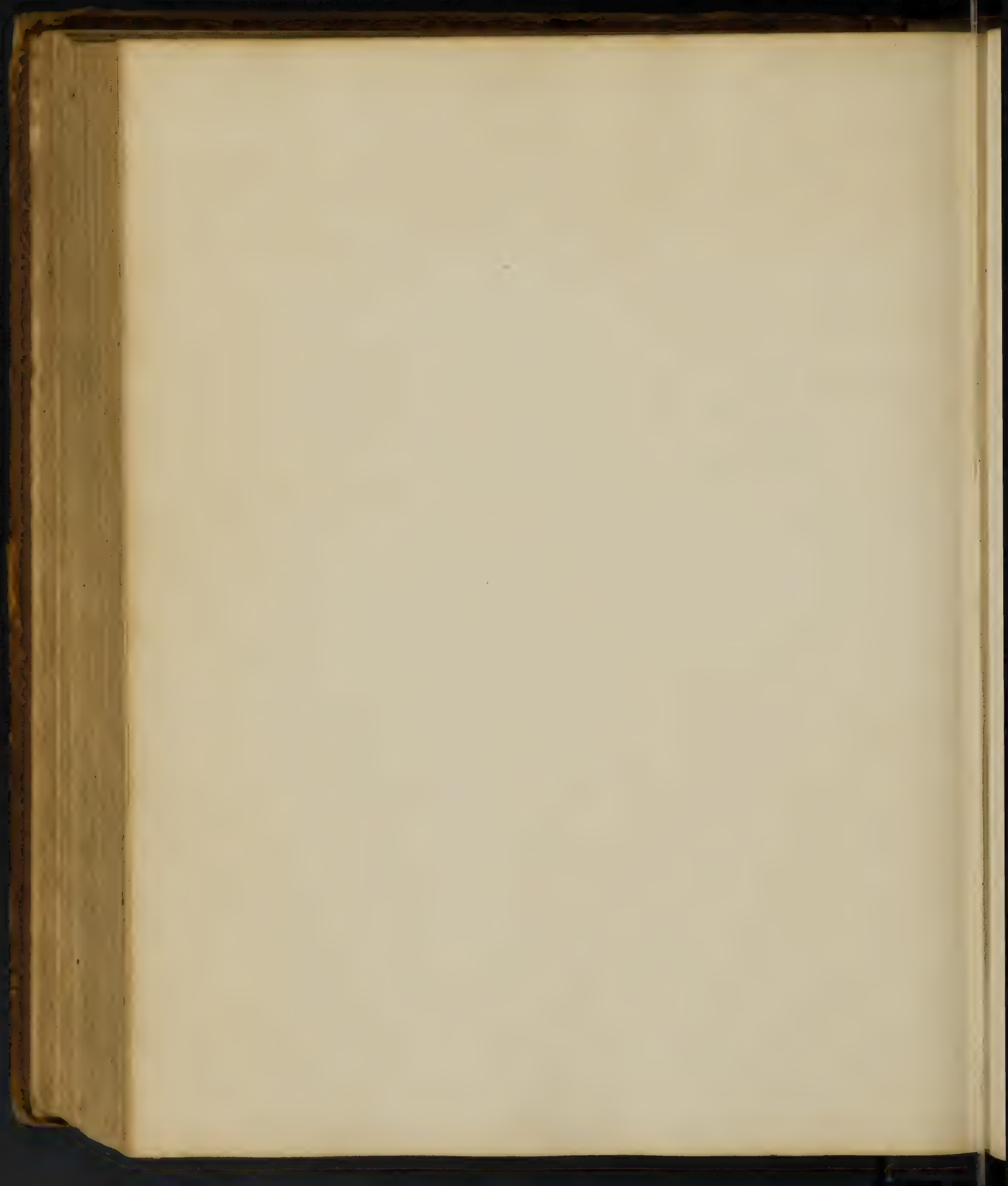
The Clerks of the several Courts of the State shall have power to open any deposition filed with the Court of which they are respectively Clerks, either in vacation or during the term of the Court in open Court or elsewhere as may be convenient.

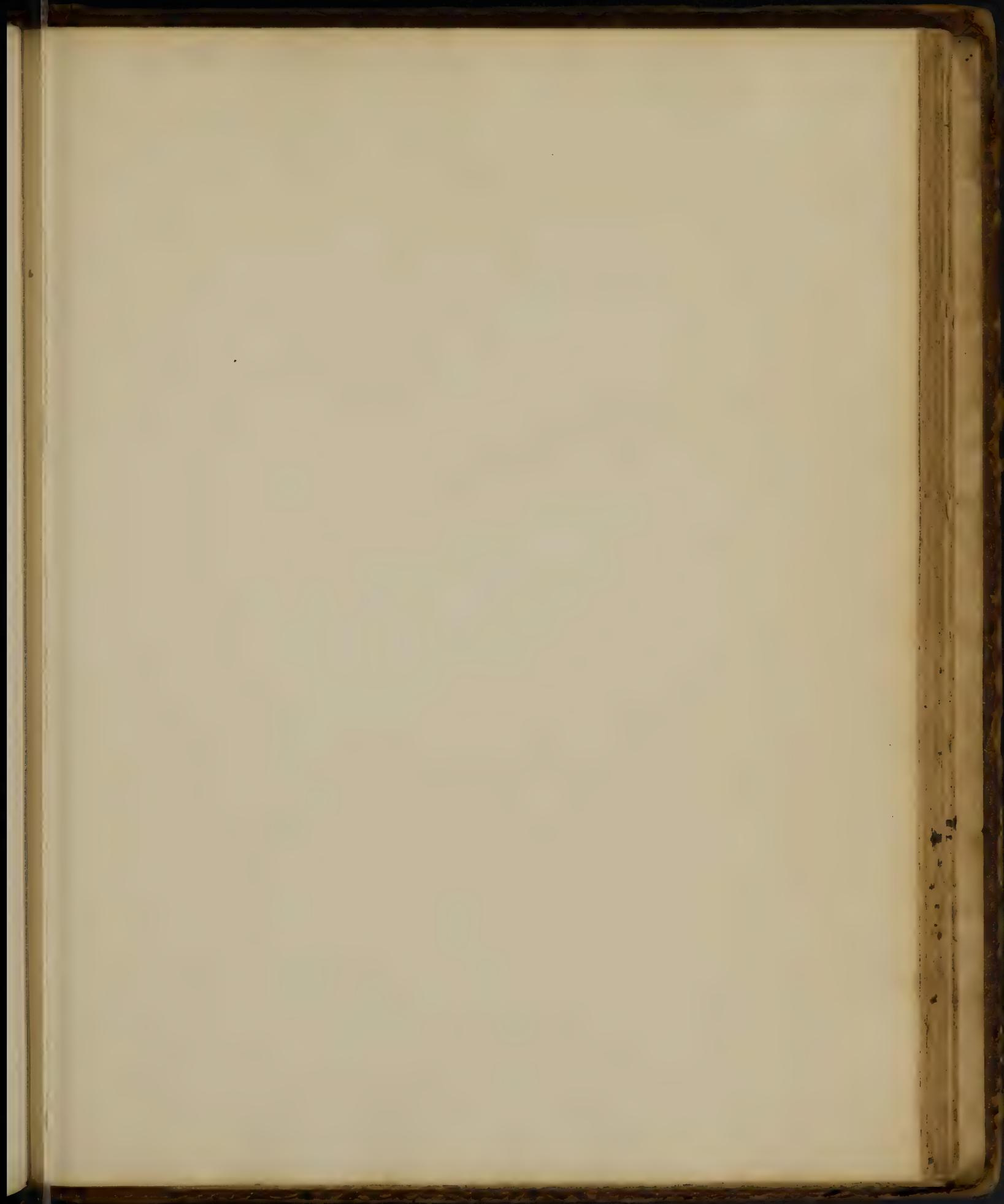
Either judge of the Superior Court when the Court is not in session shall have power when necessary to issue a commission to take the deposition of any person or persons, resident out of this State, to be used in a cause pending before such Court, notice being given to the adverse party to appear before such Judge, and the Chief Judge of each County Court shall have the same power, when the Court is not in session, in giving notice to the adverse party, if the deposition is to be taken before such County Court of which he is Judge.



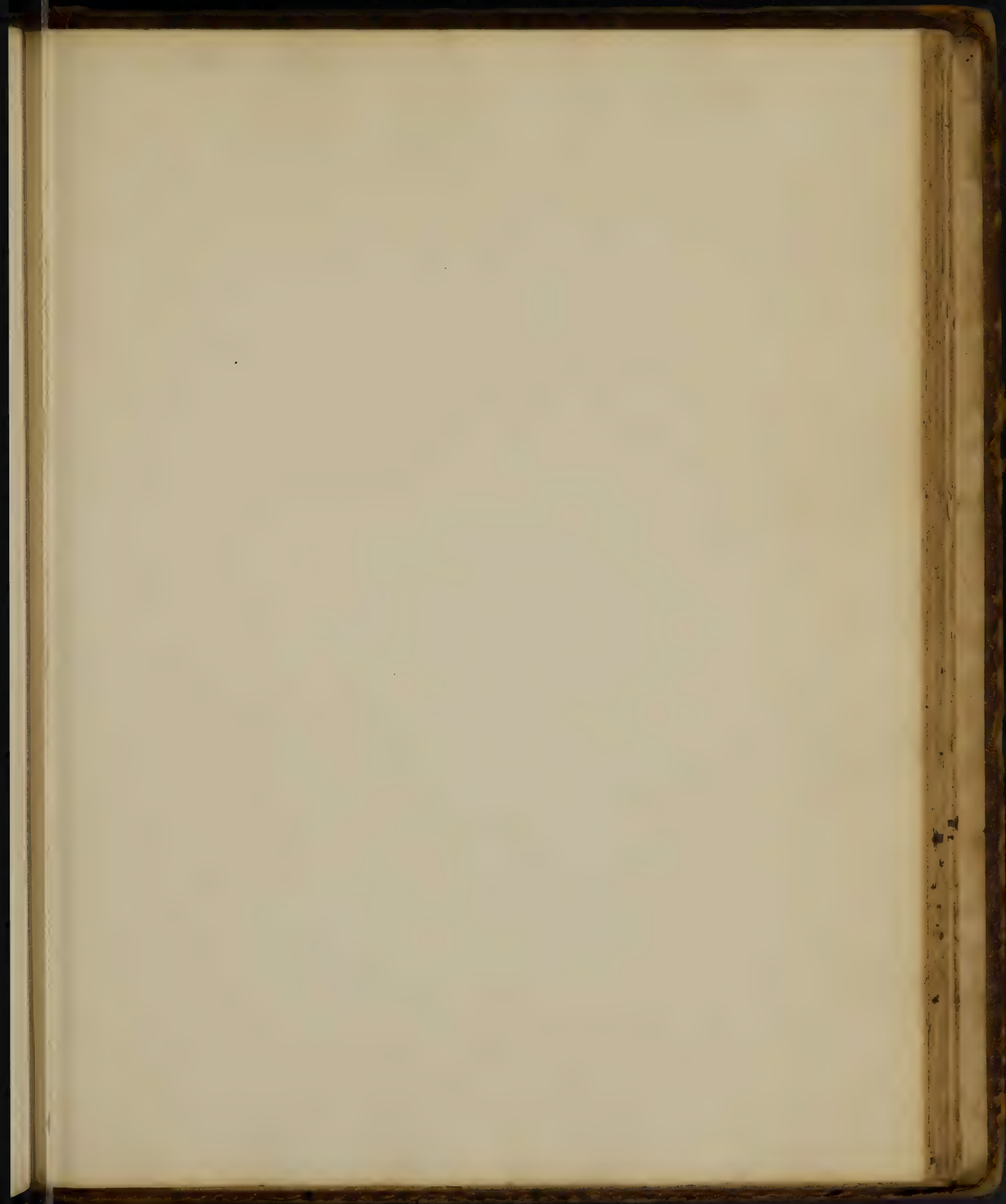


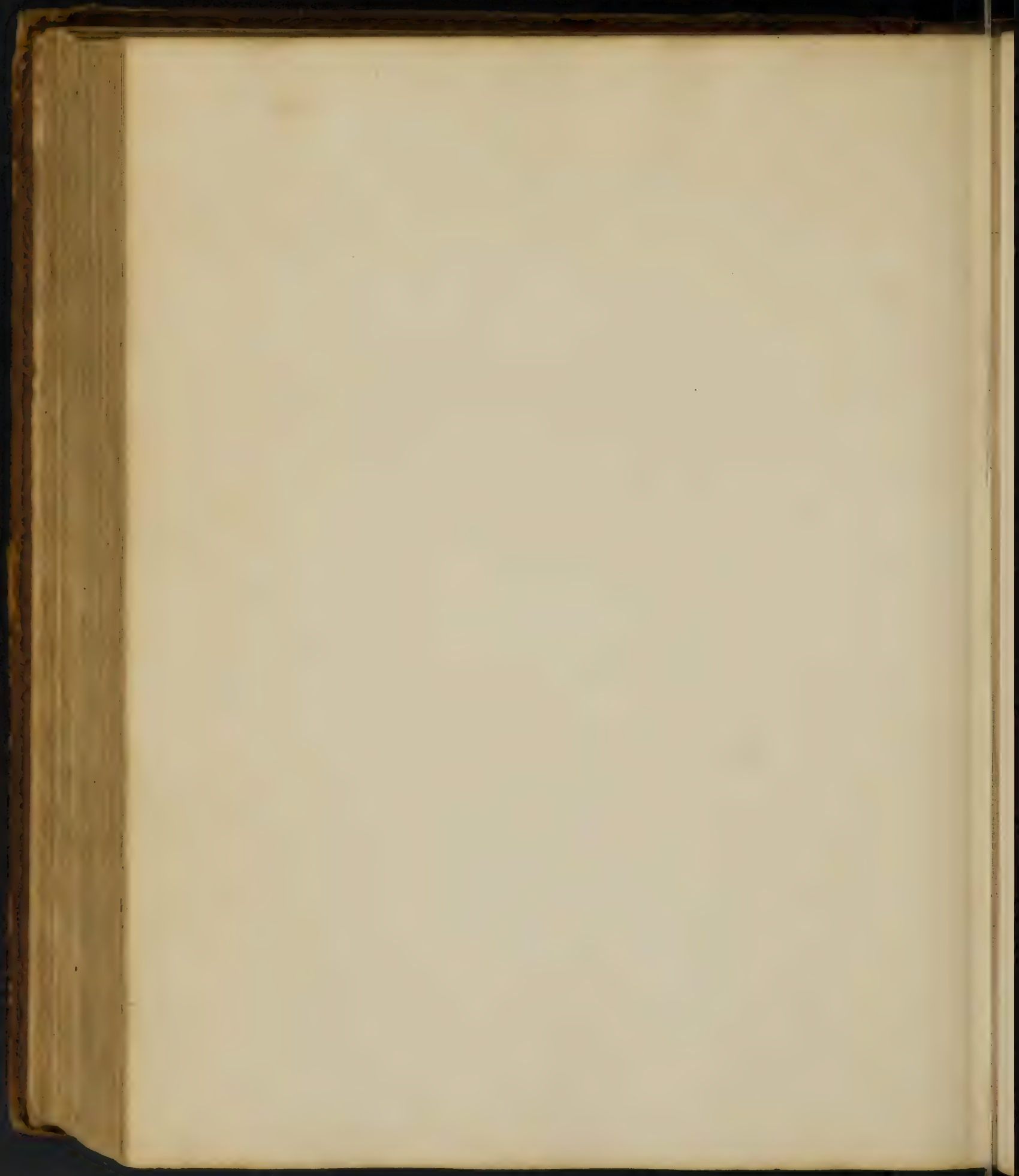


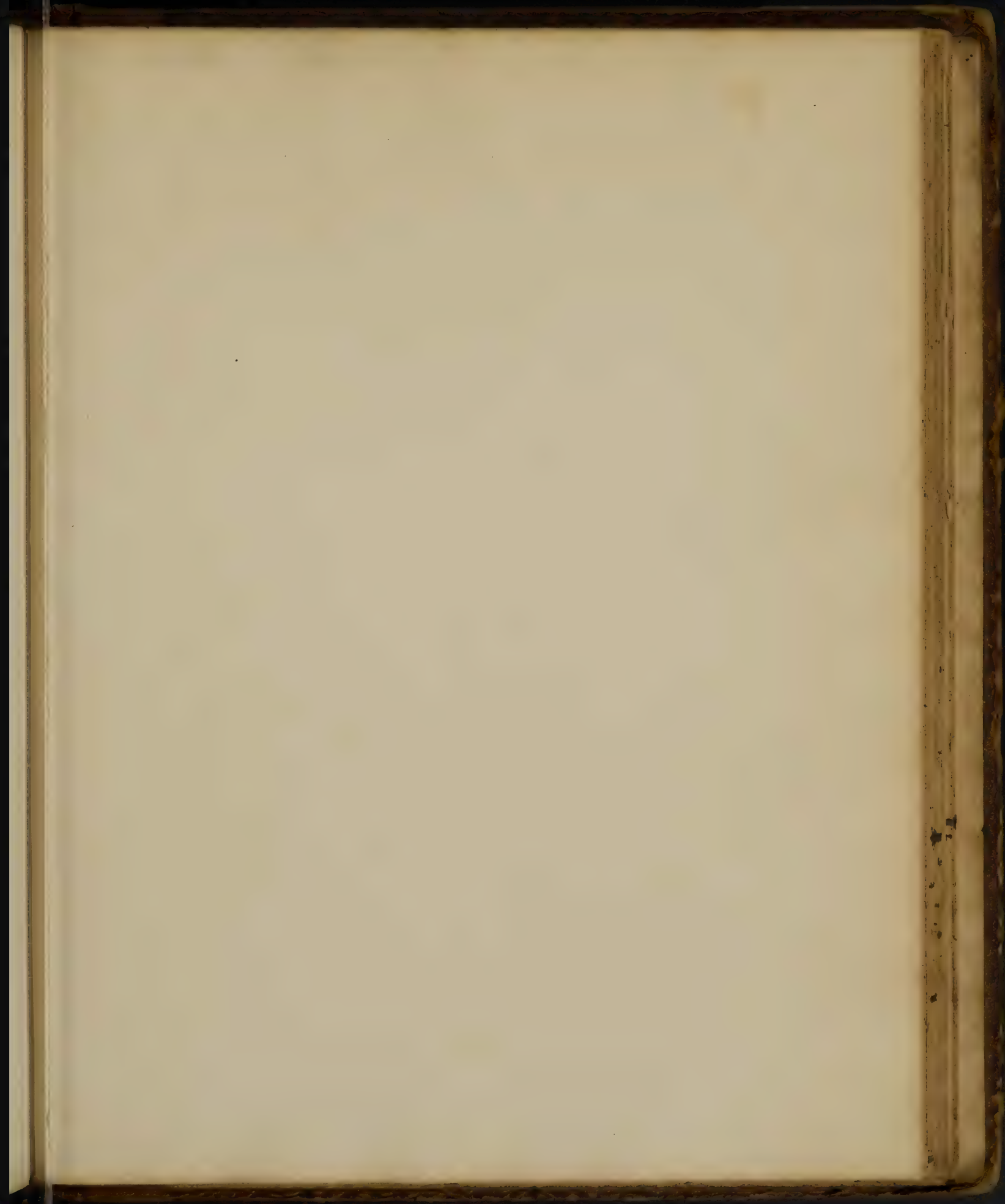




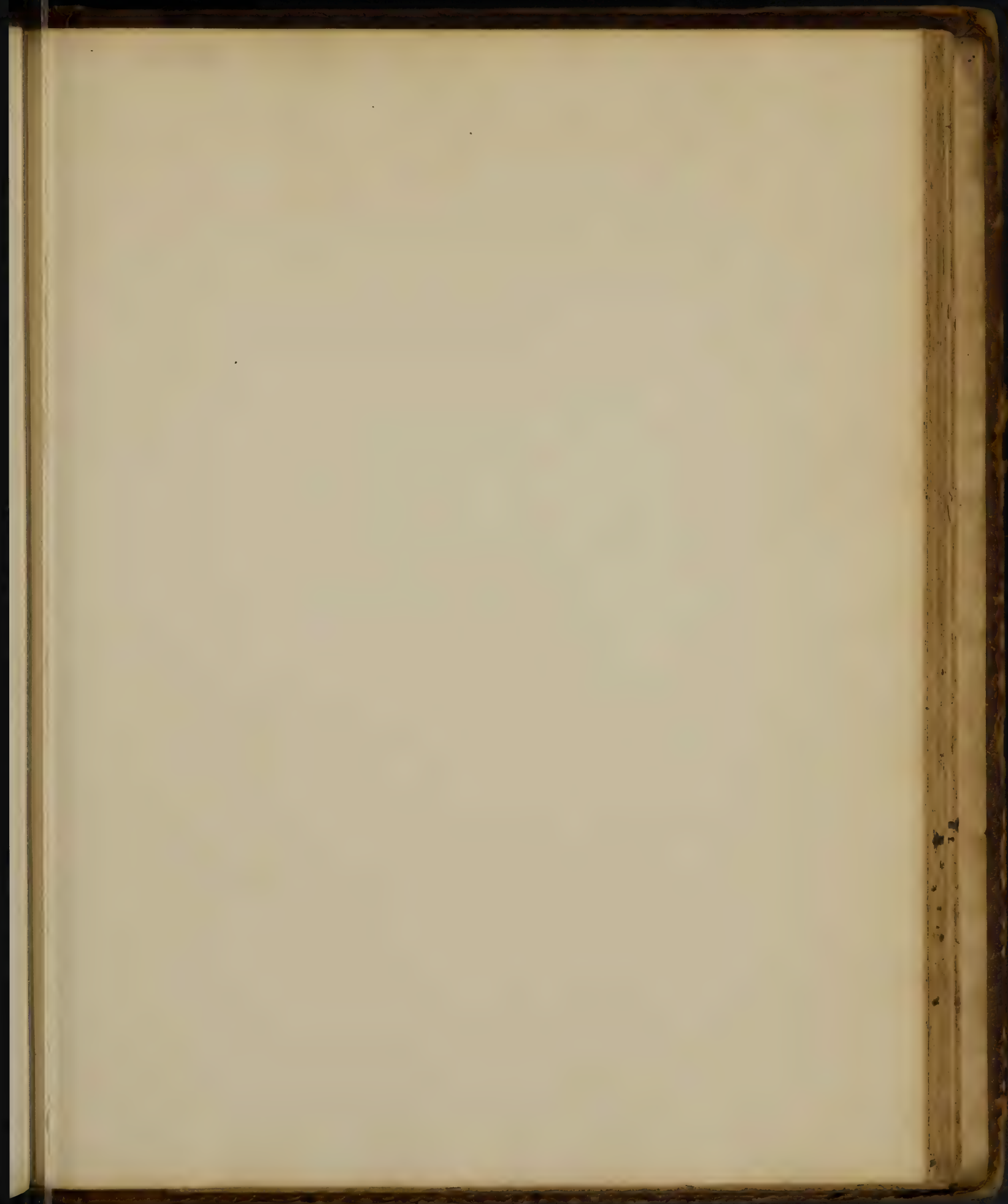


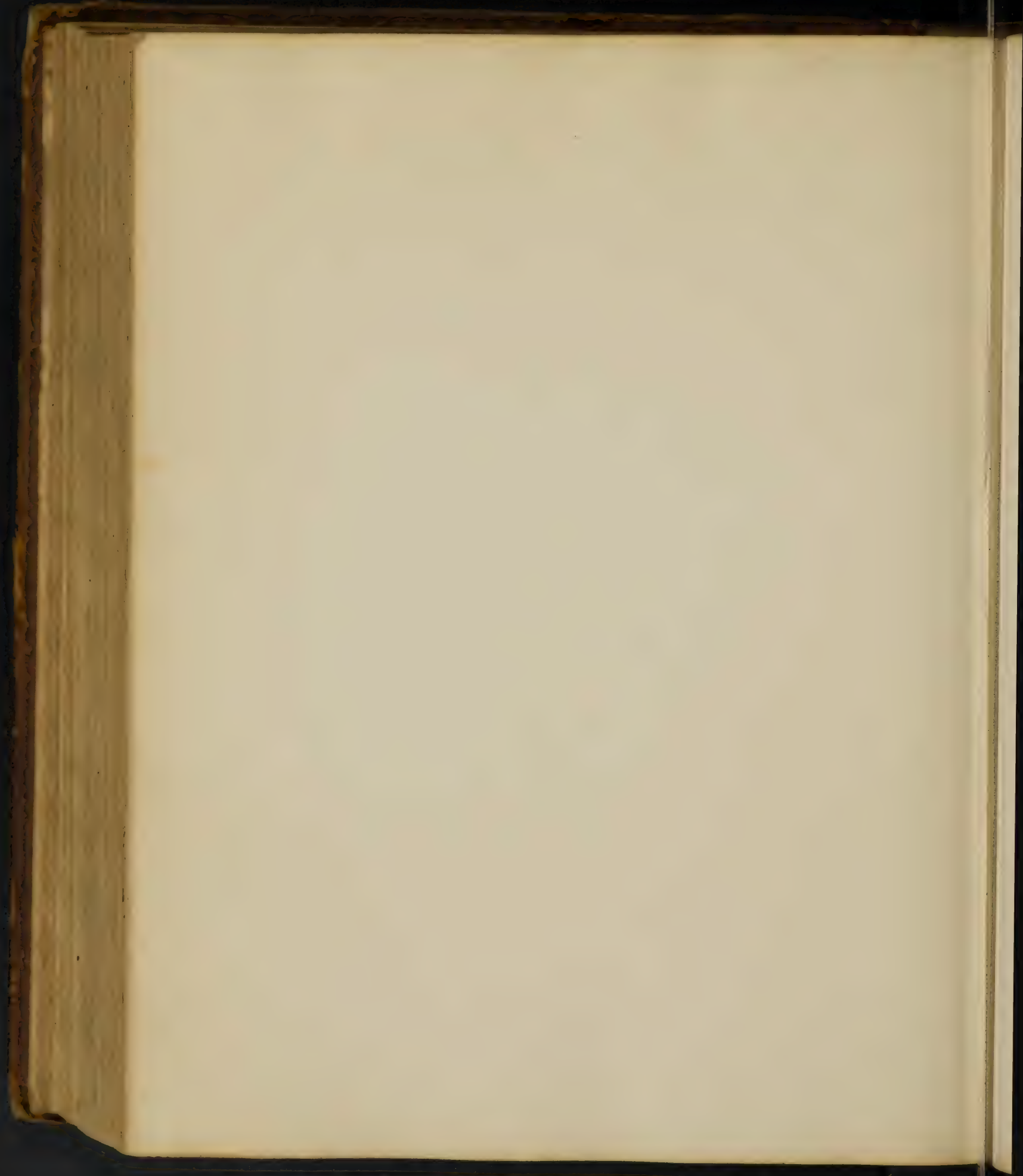


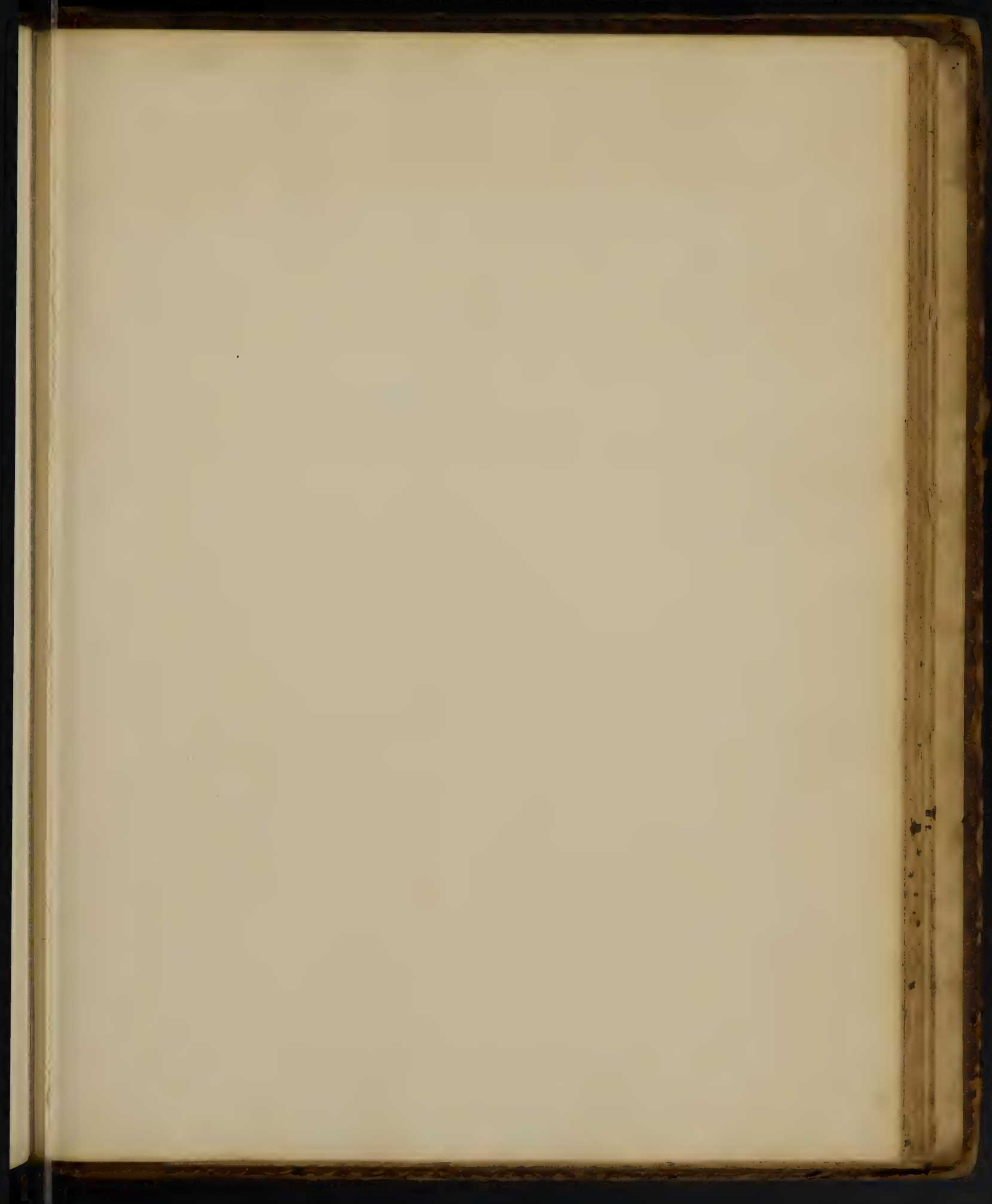




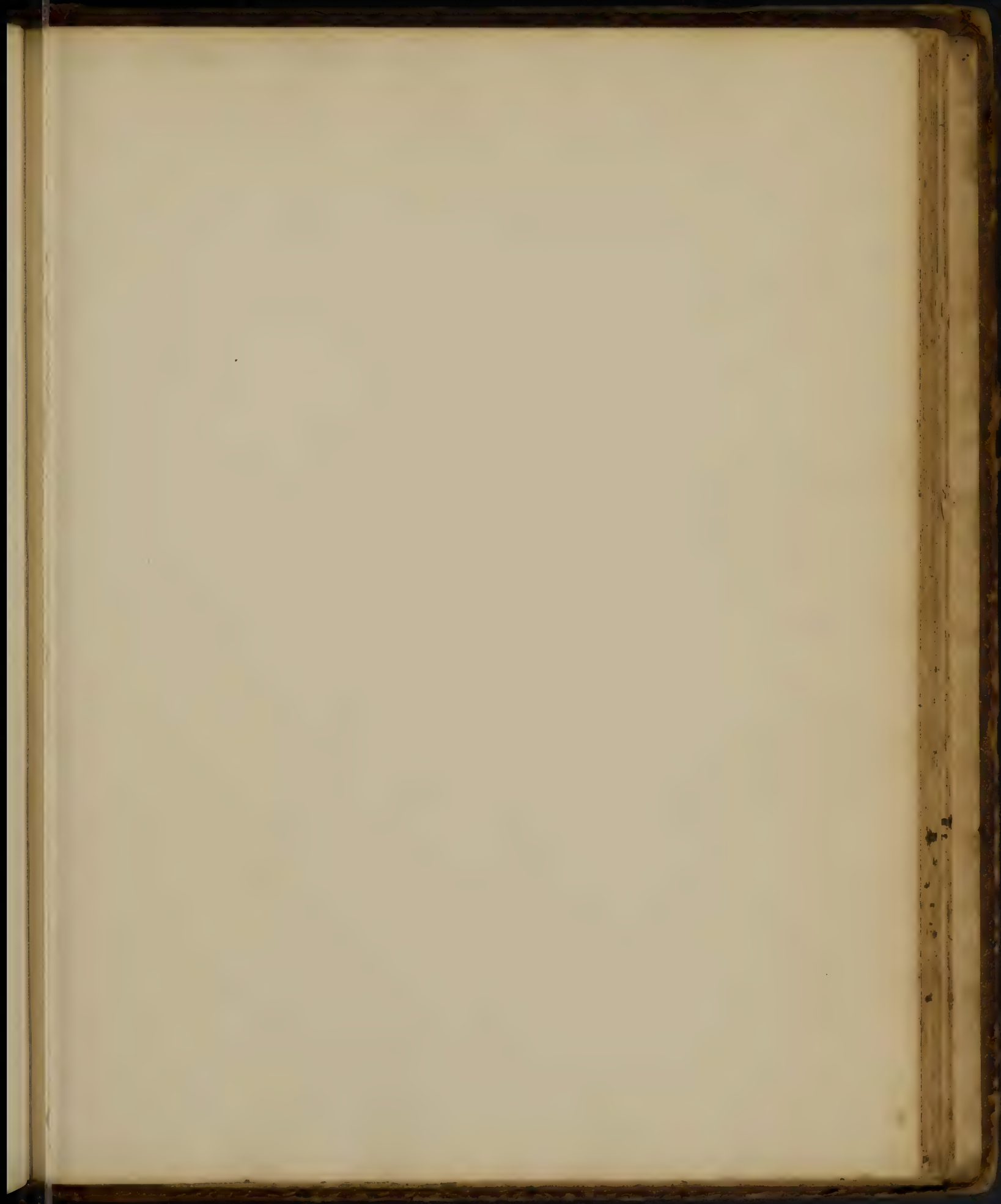




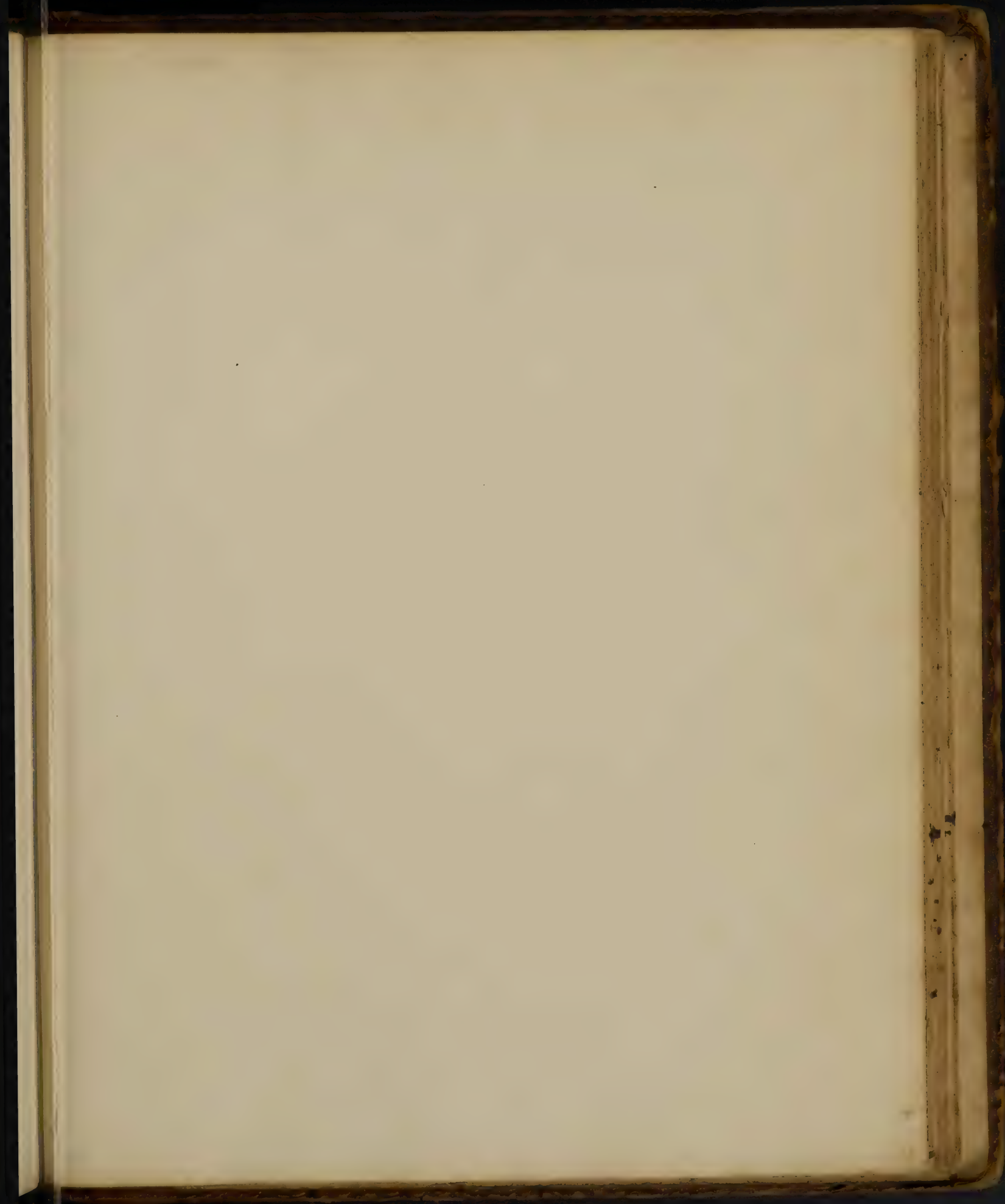


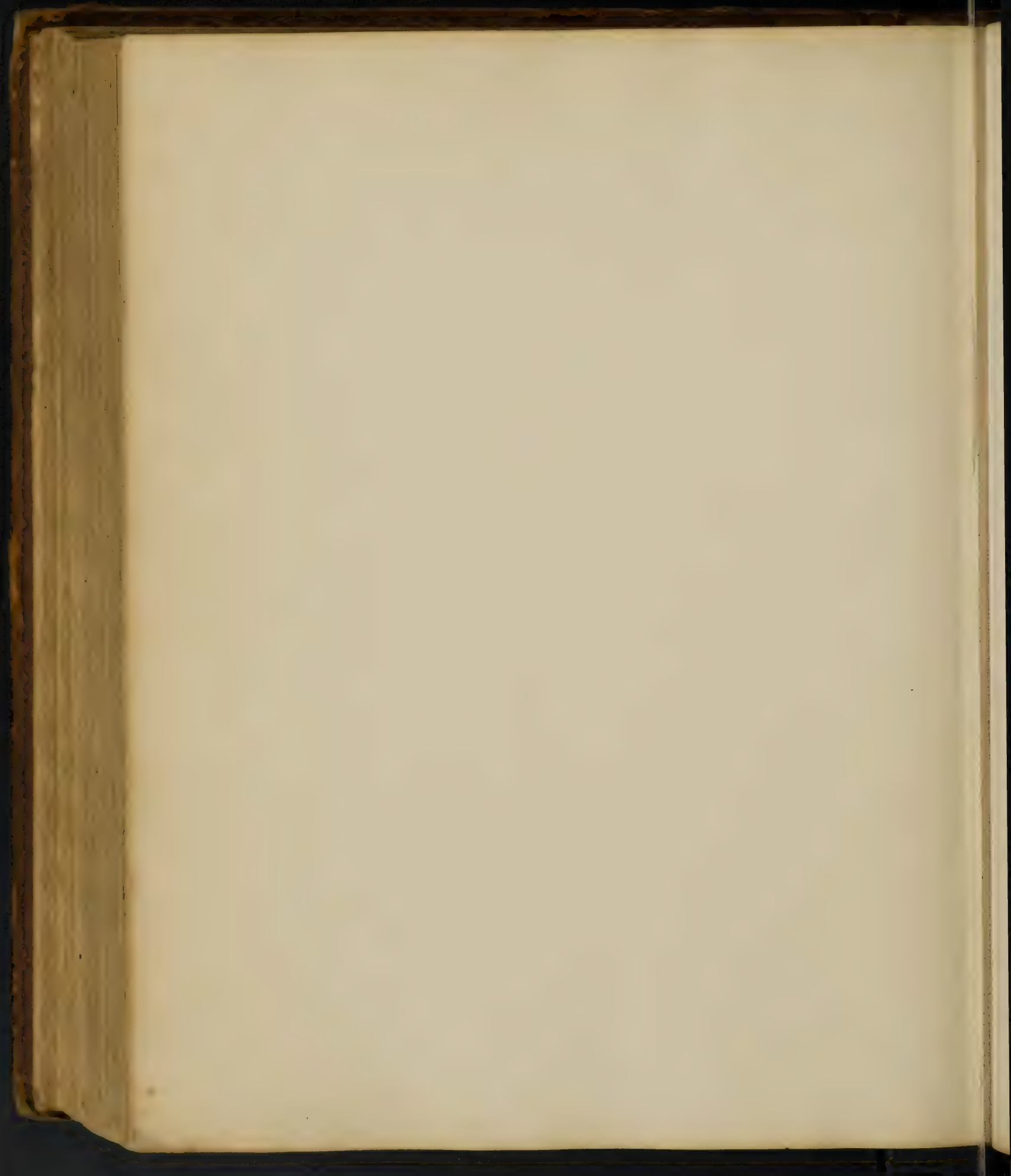


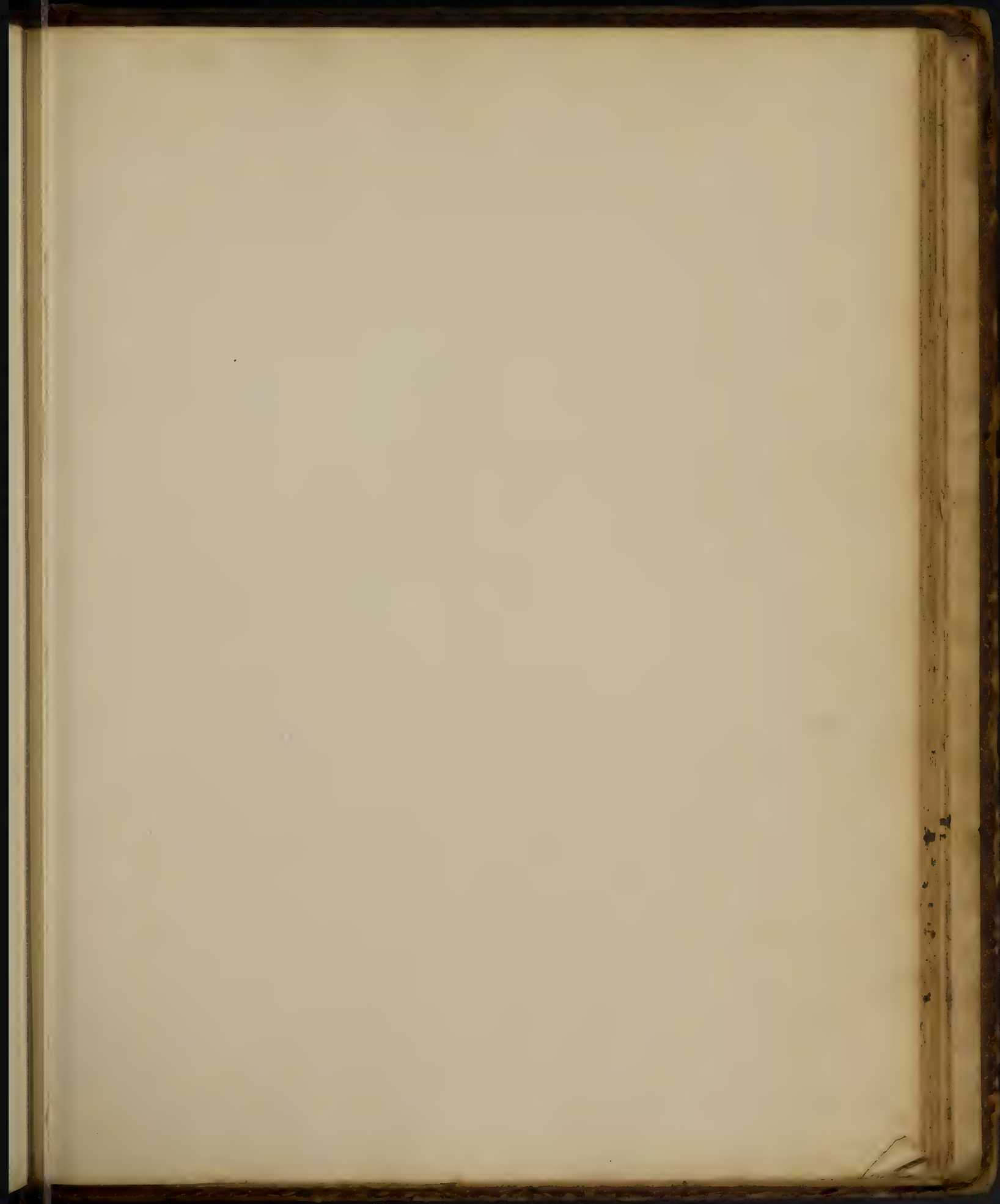


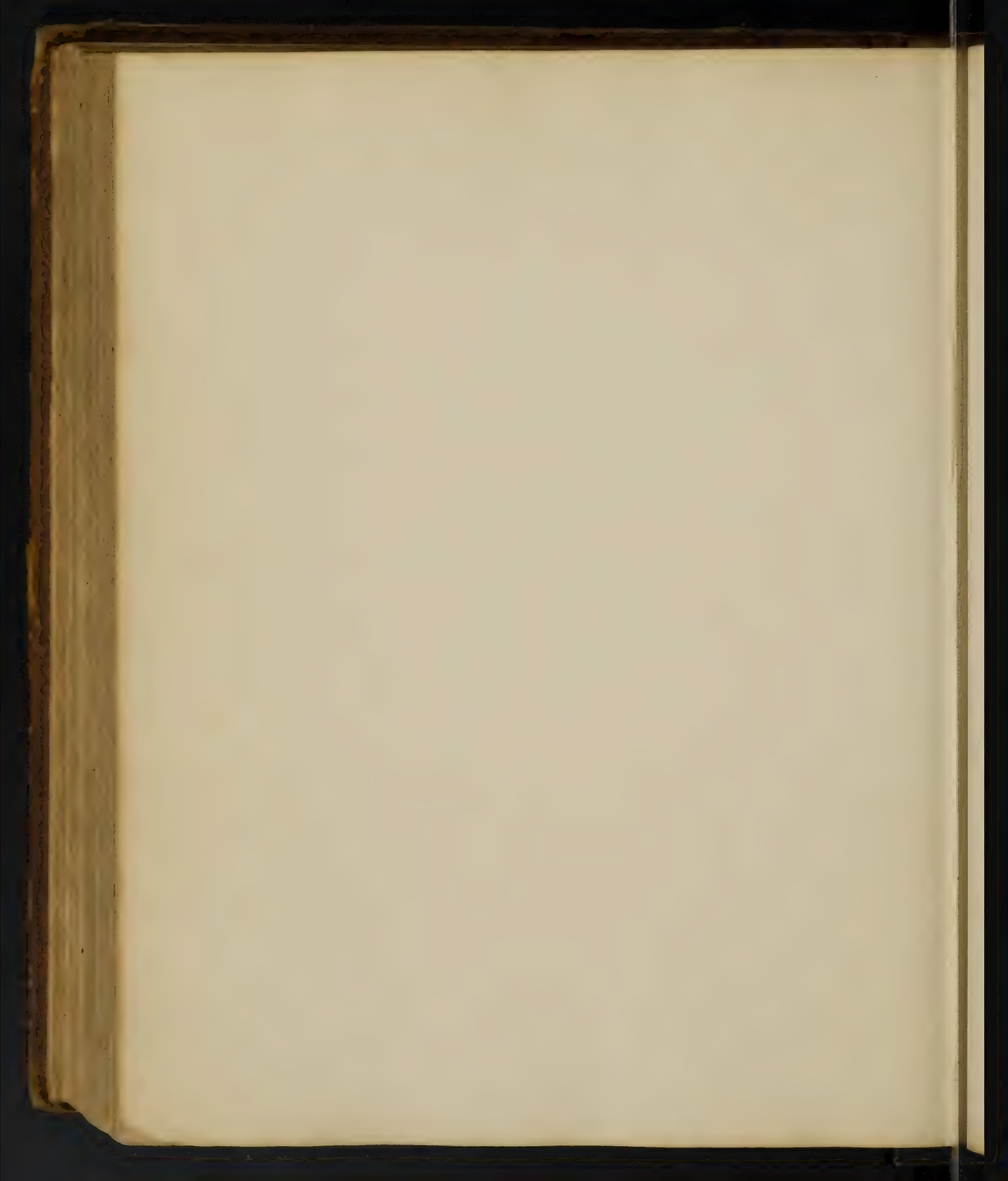


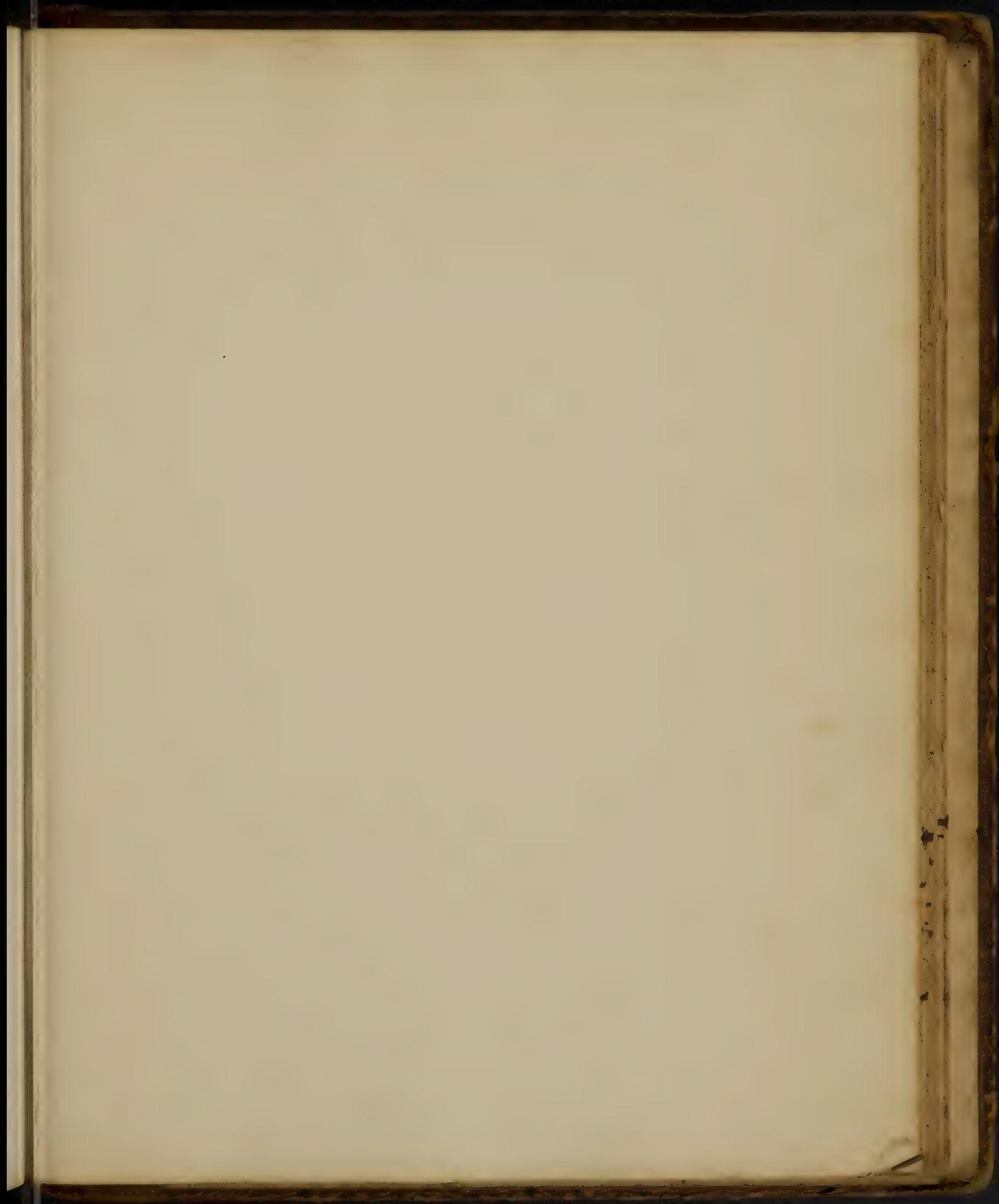


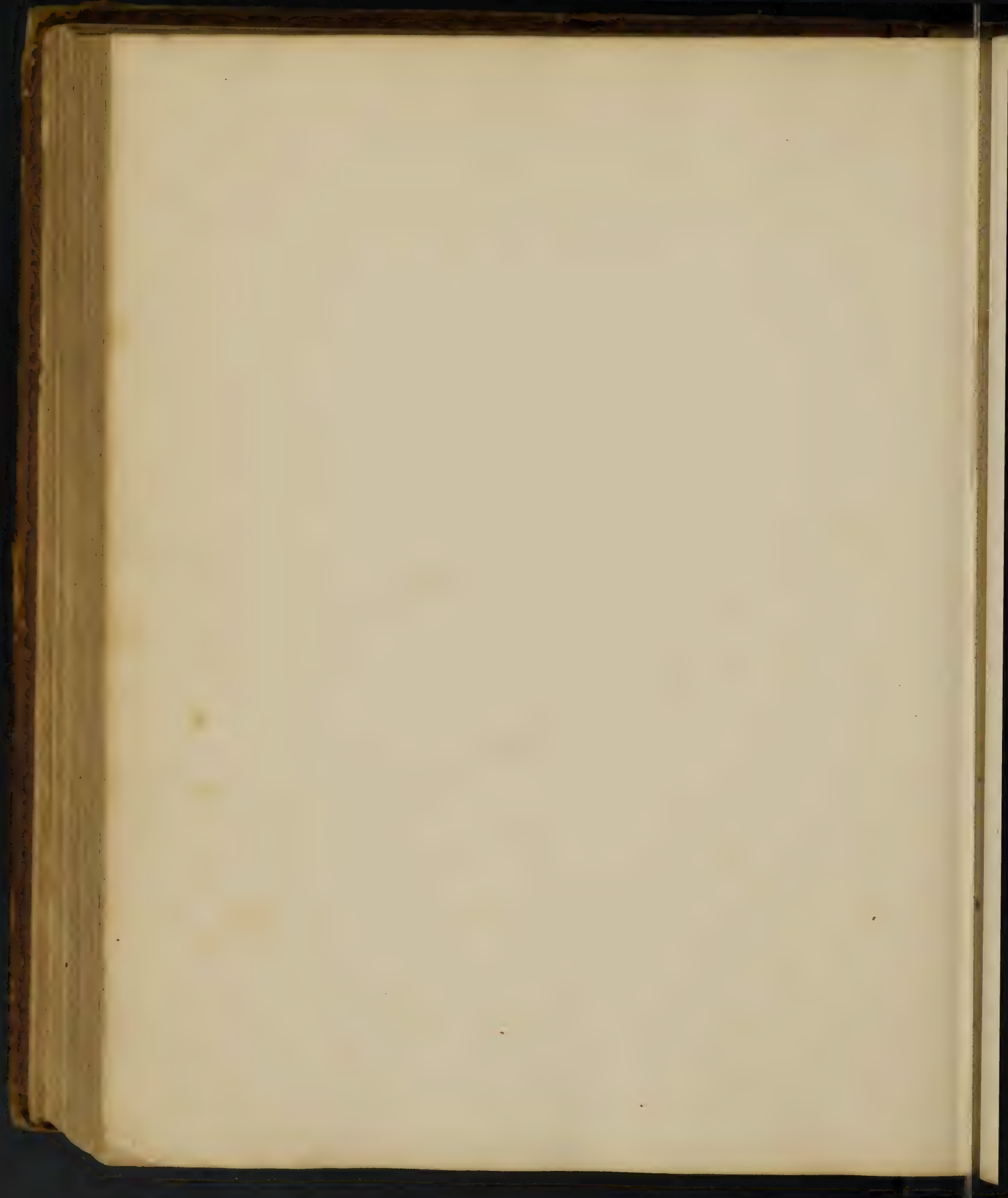


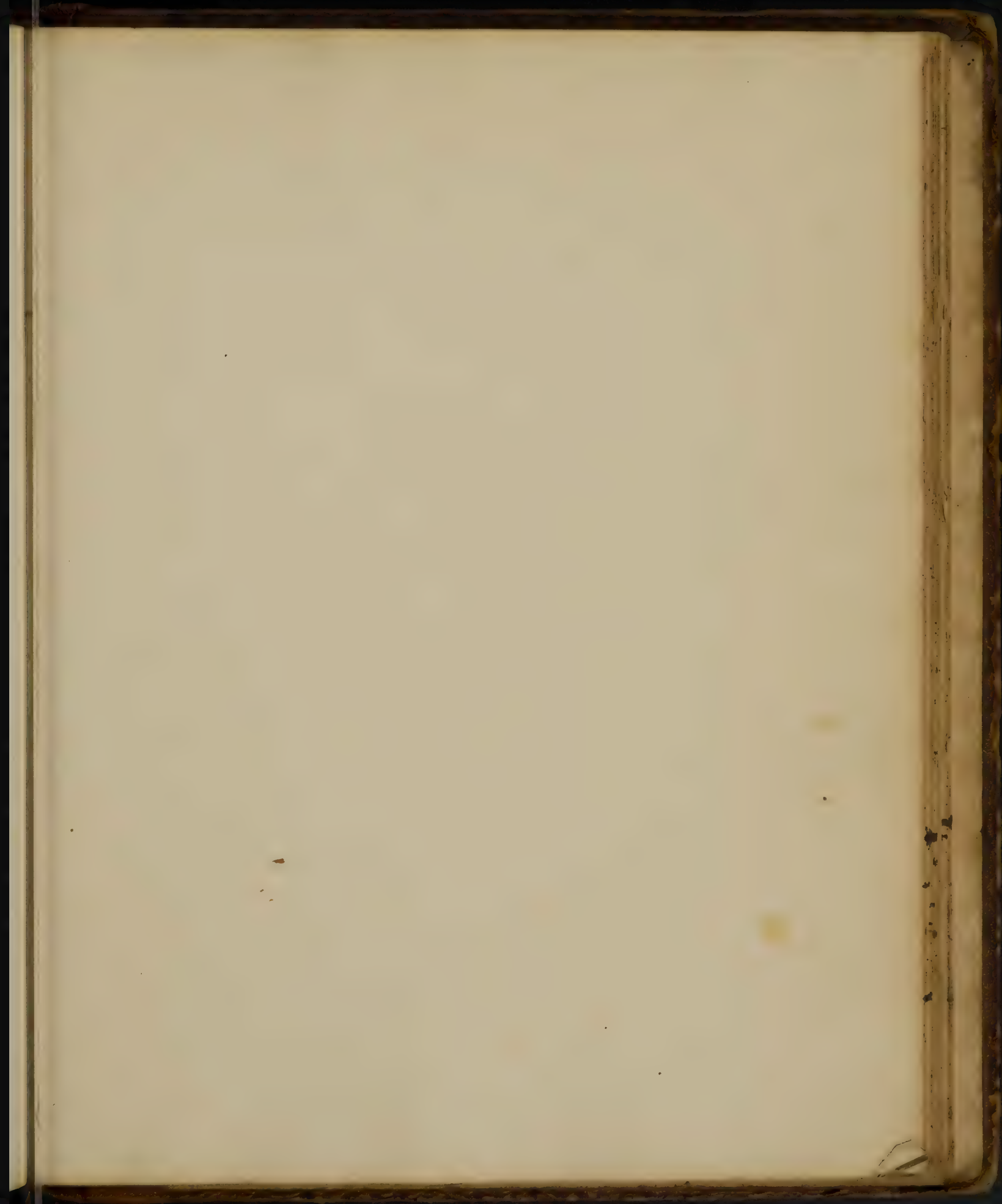


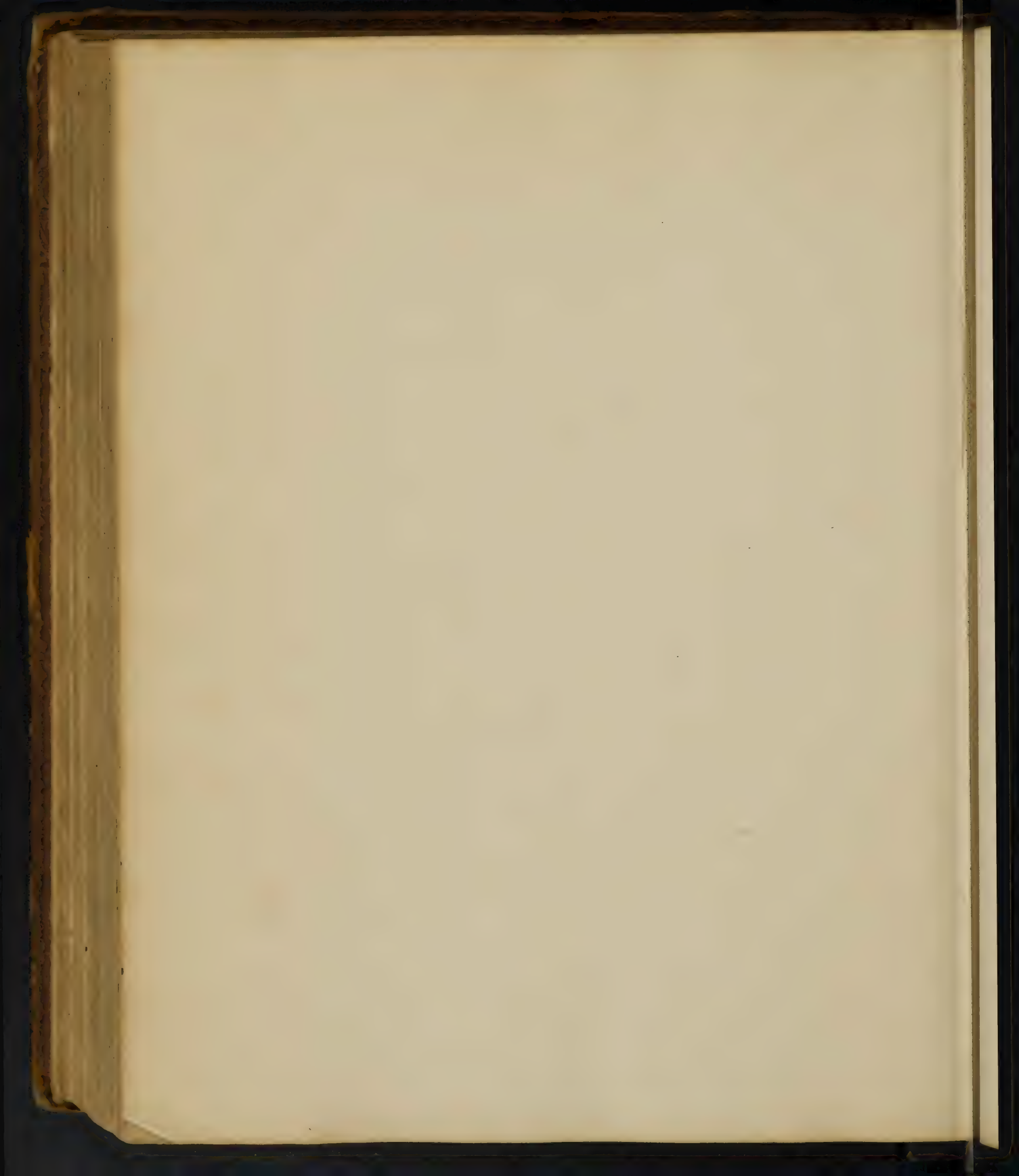


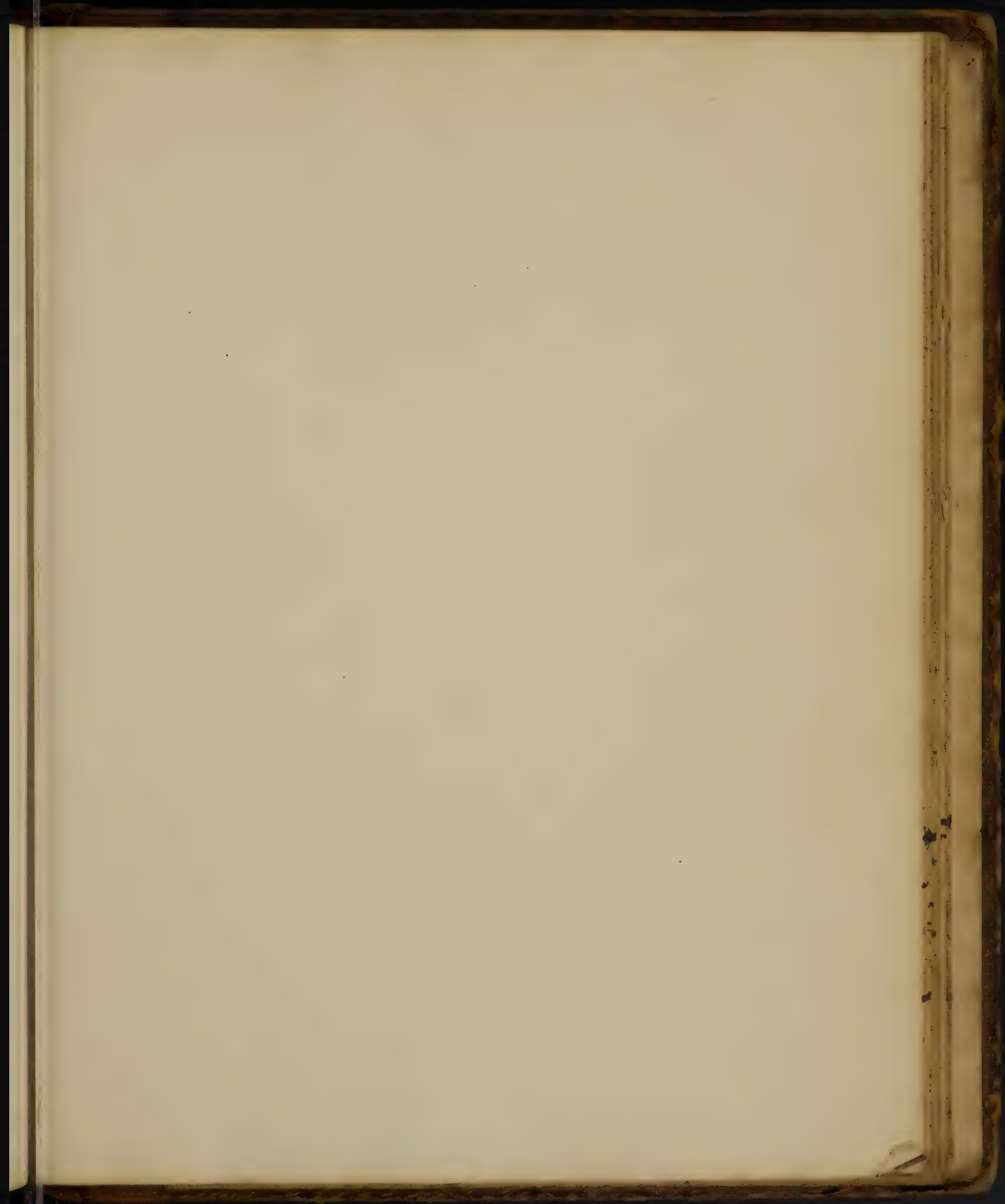


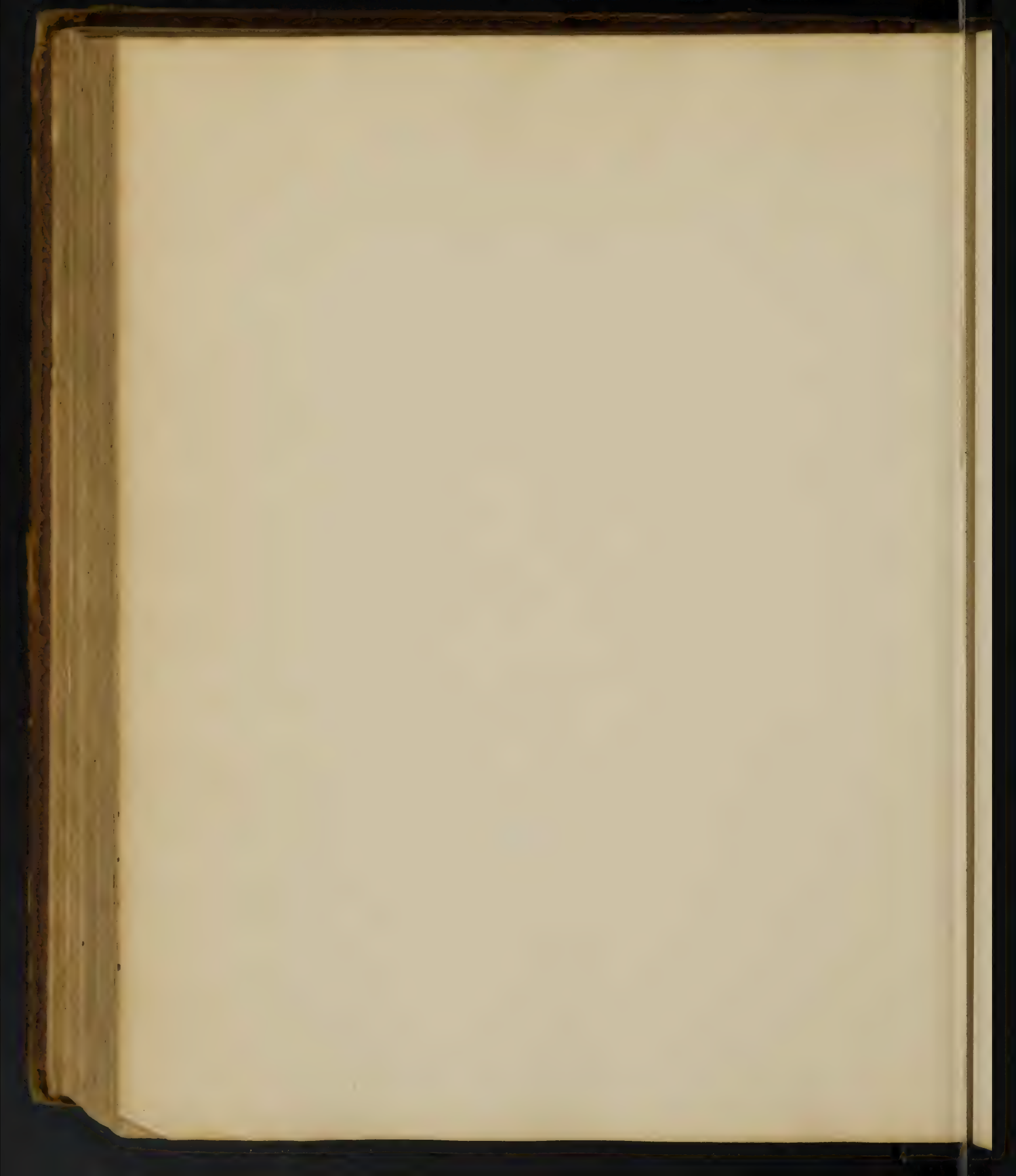


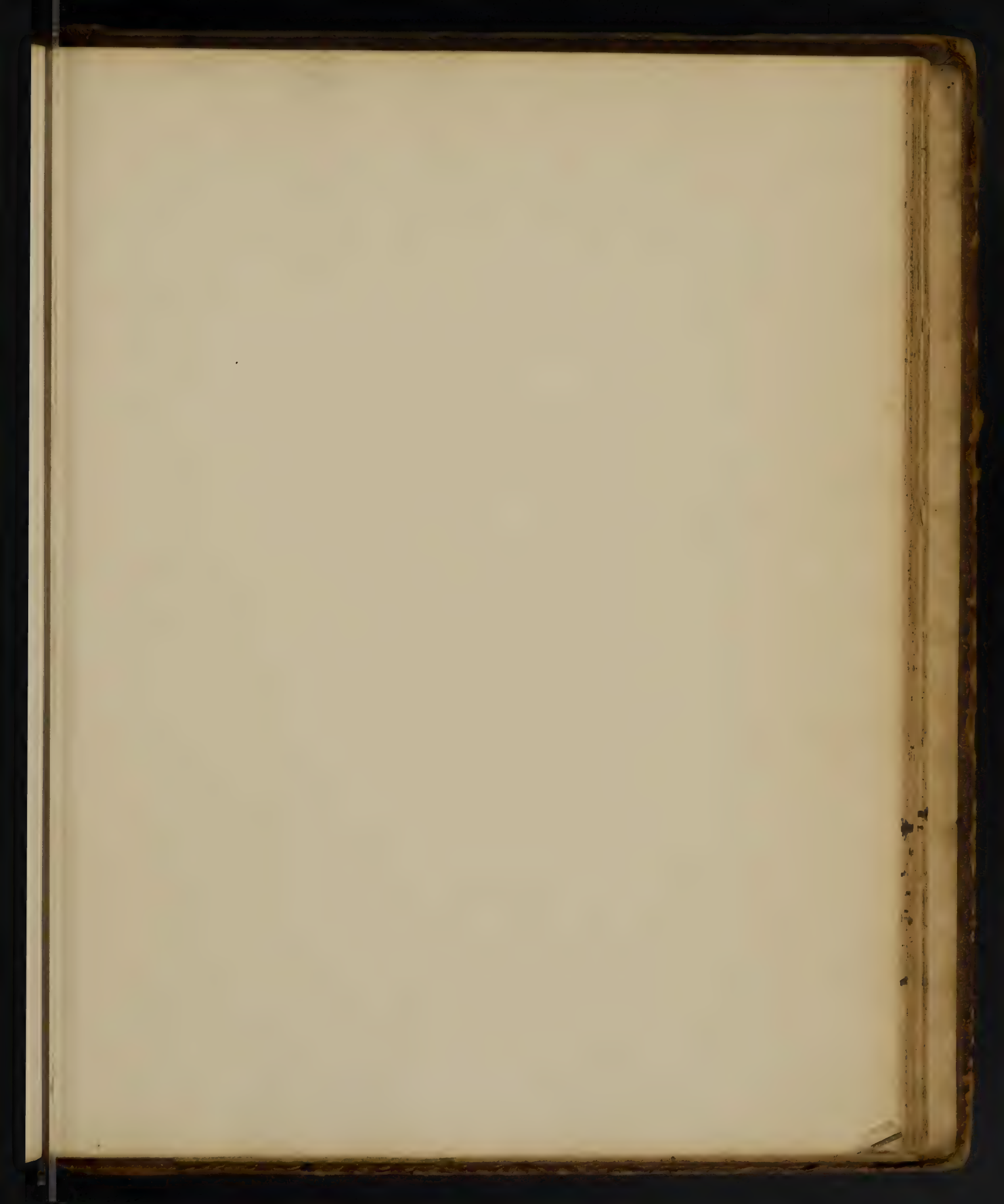


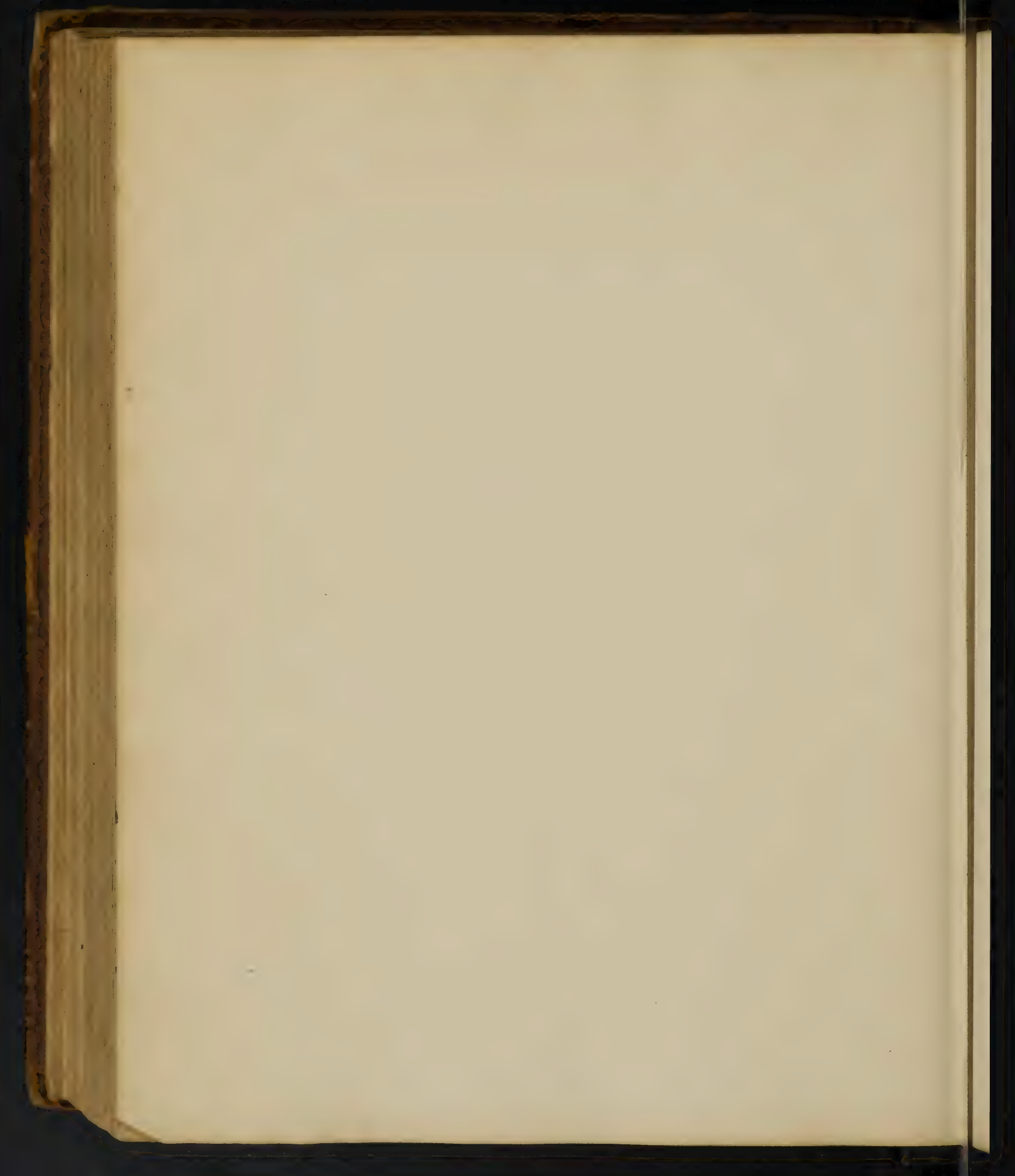


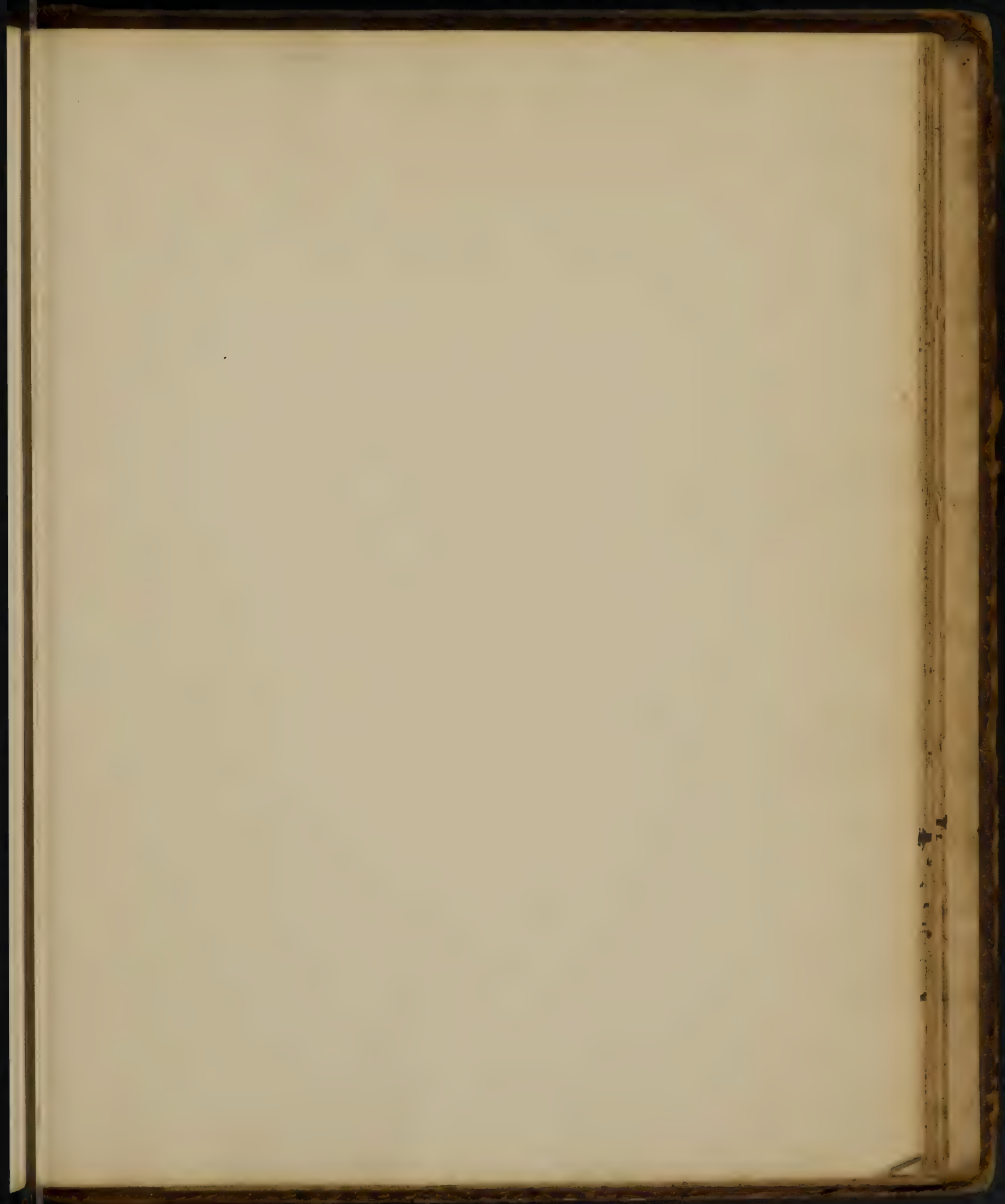


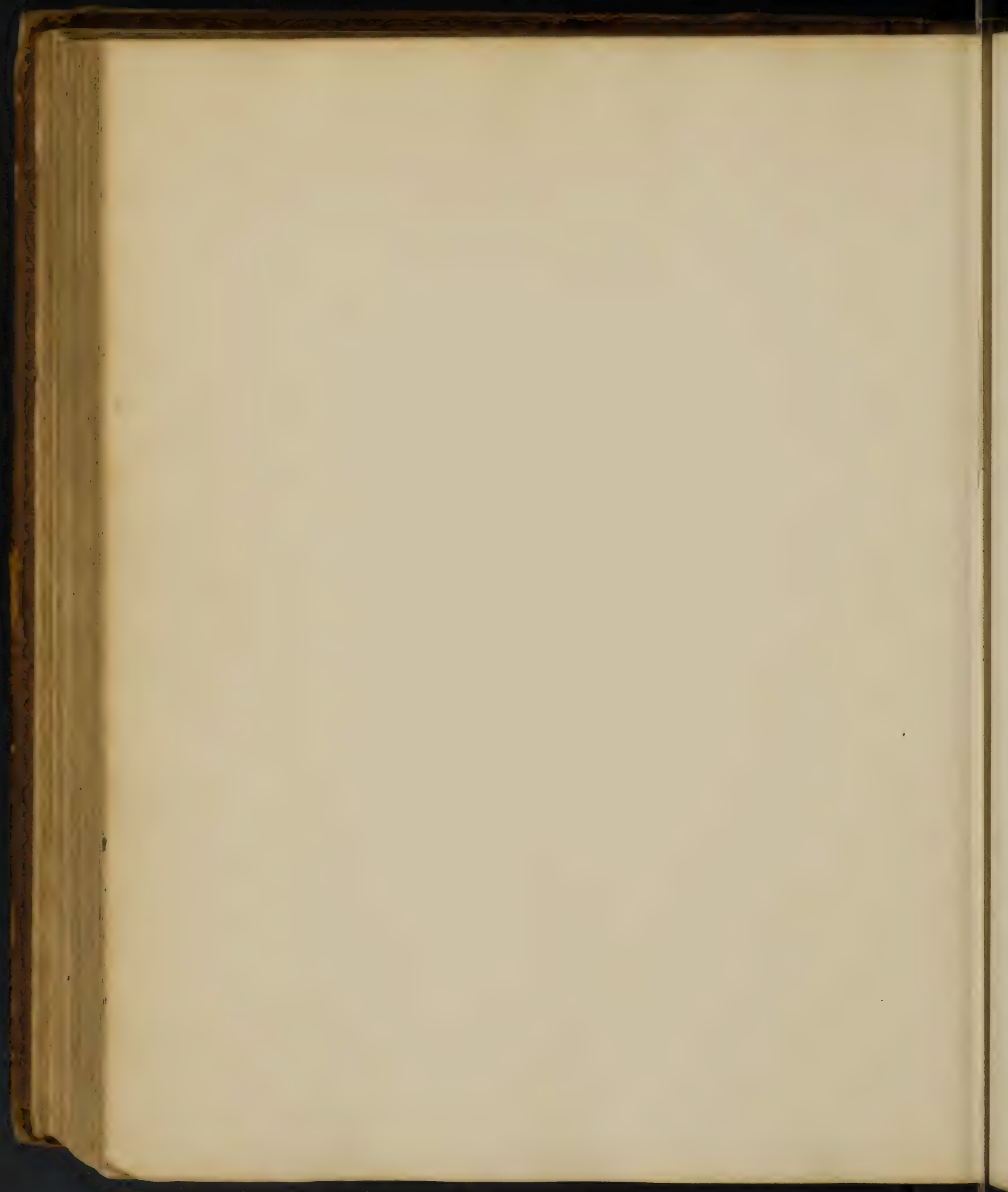


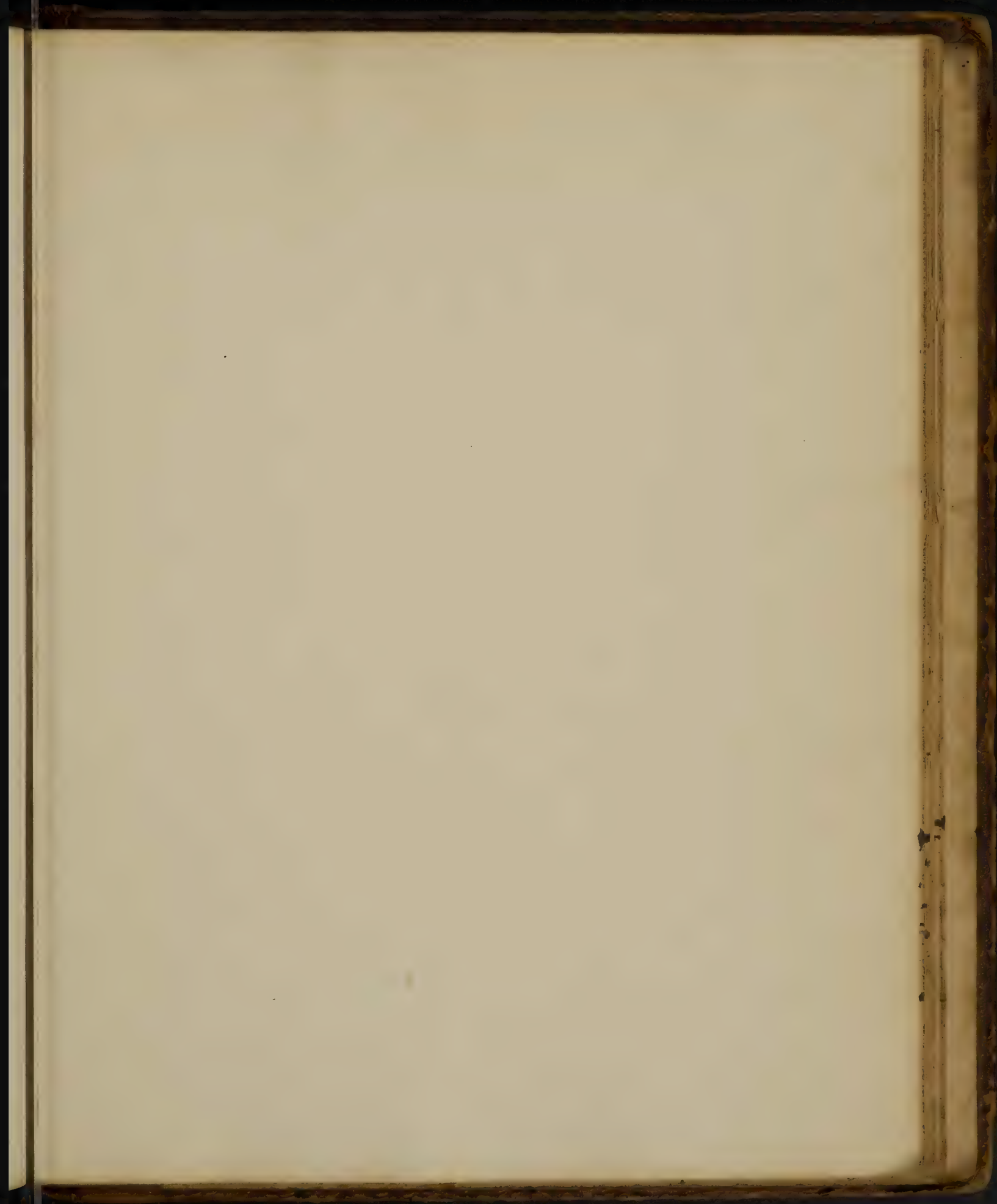


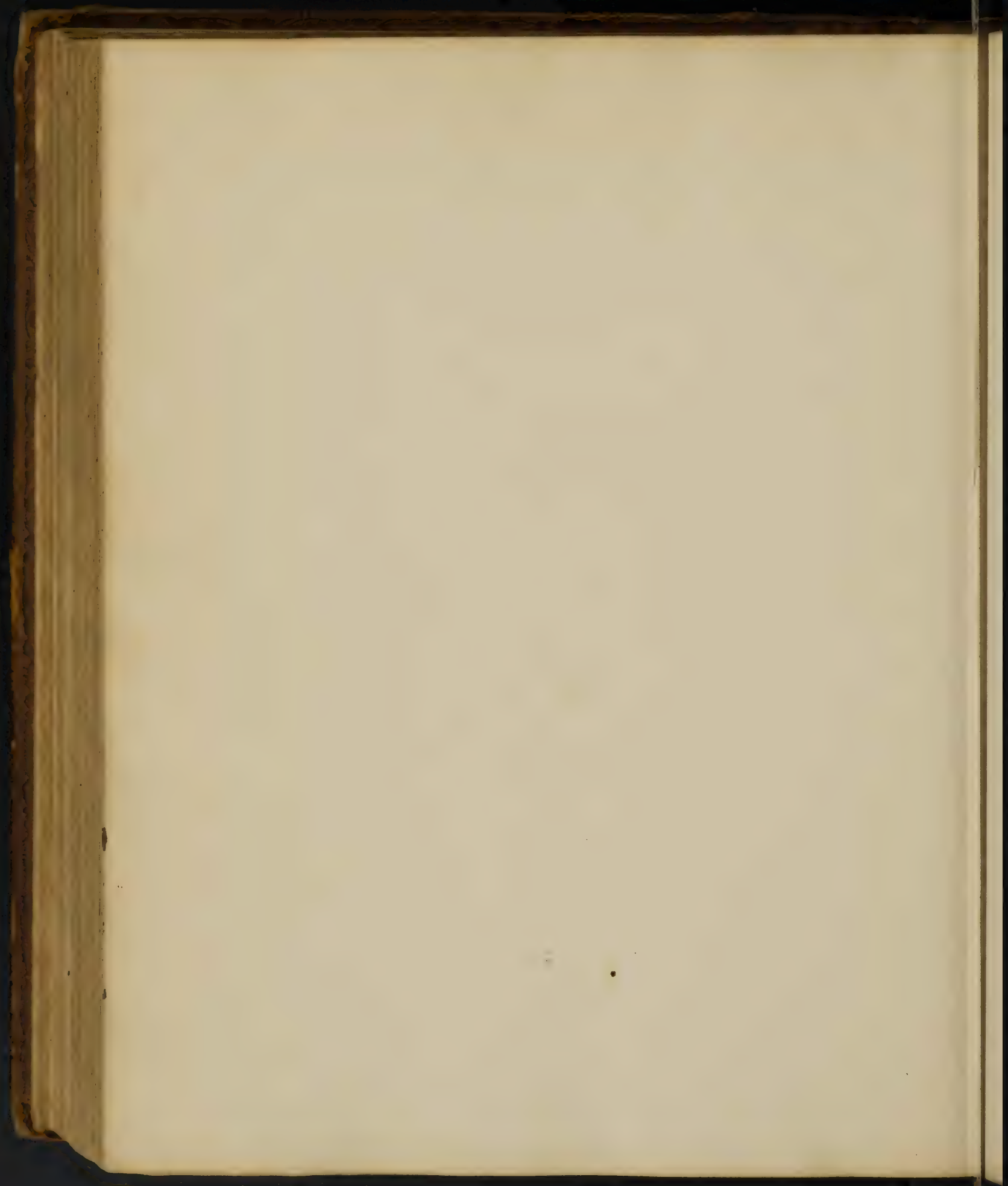


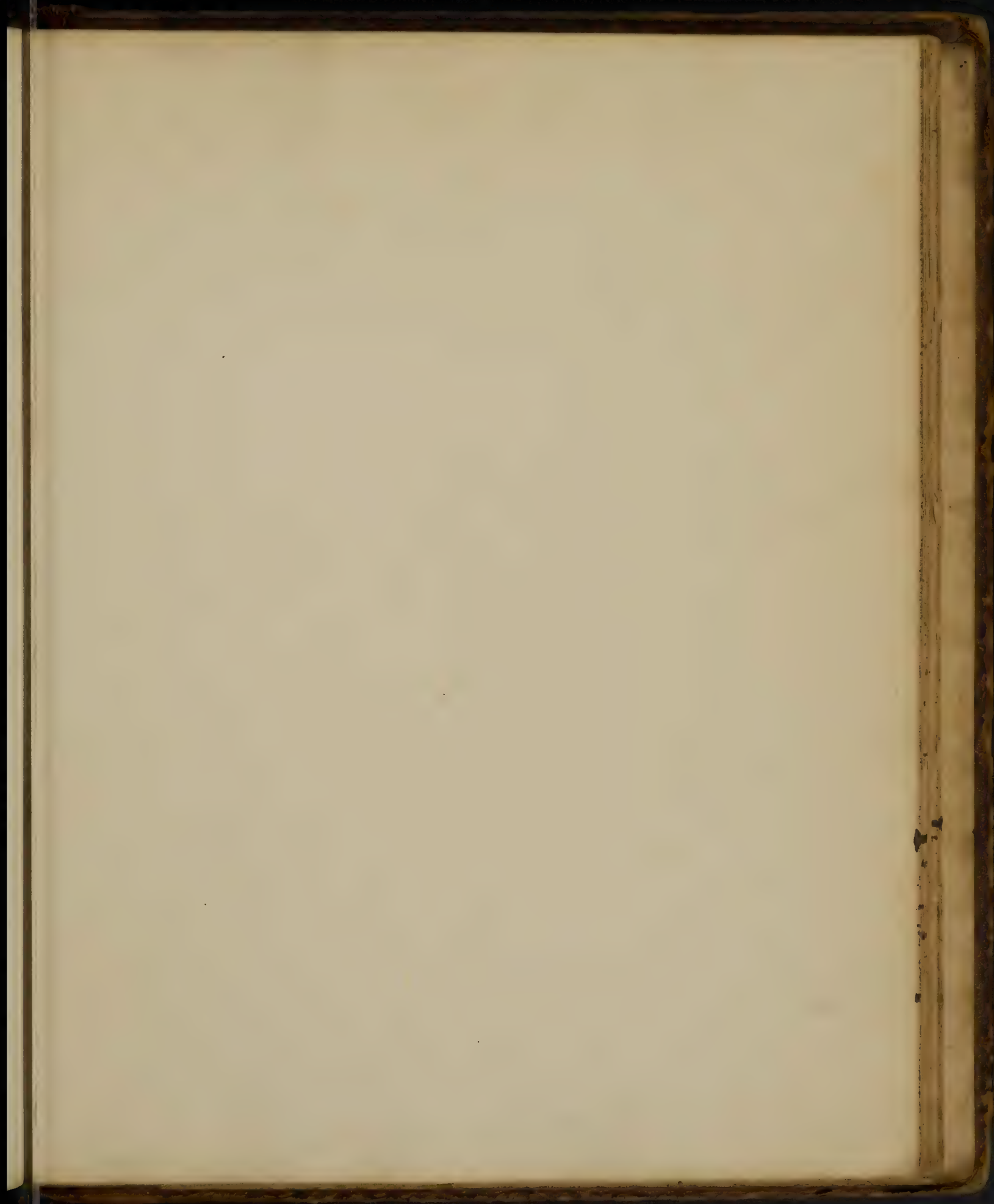




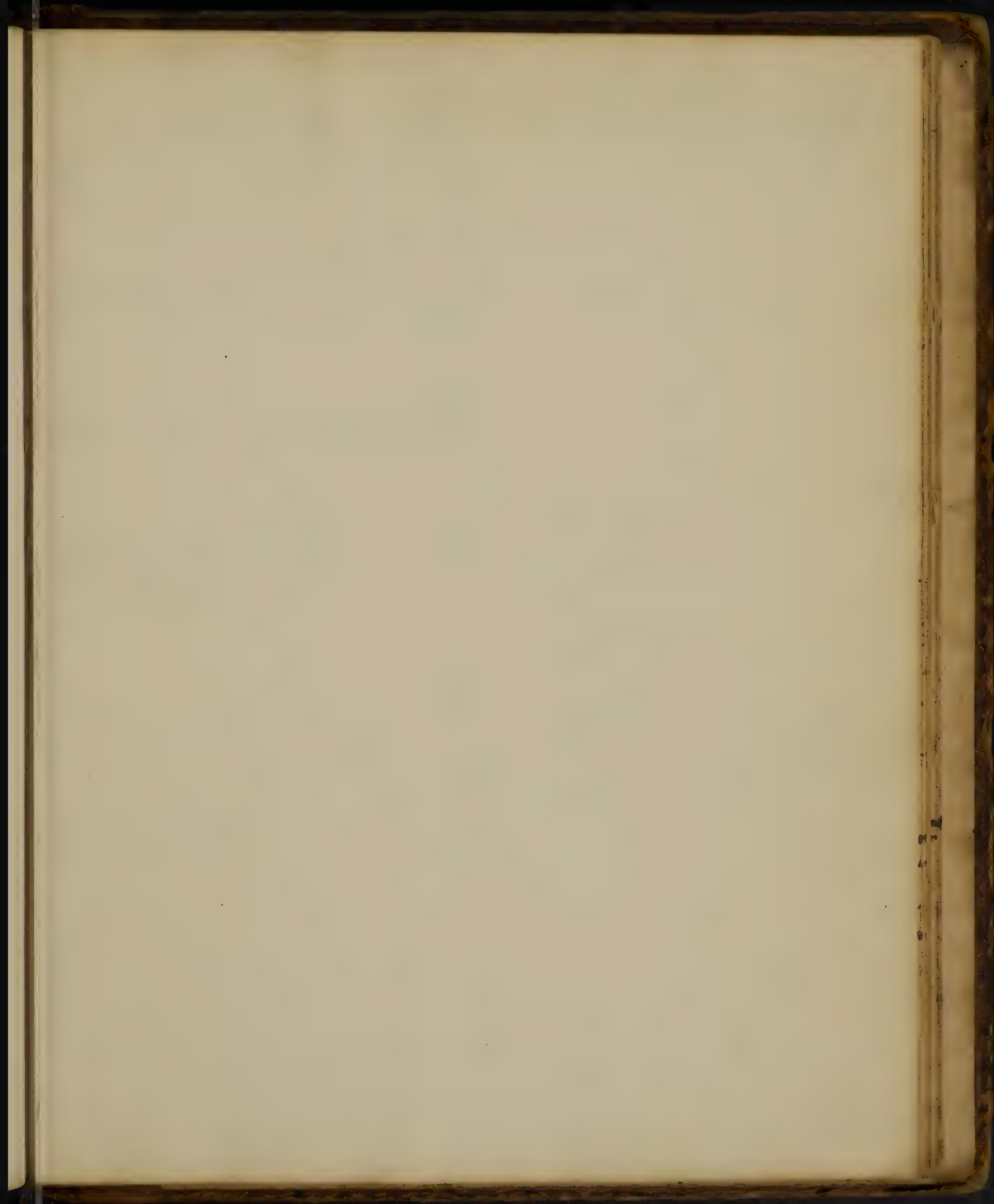


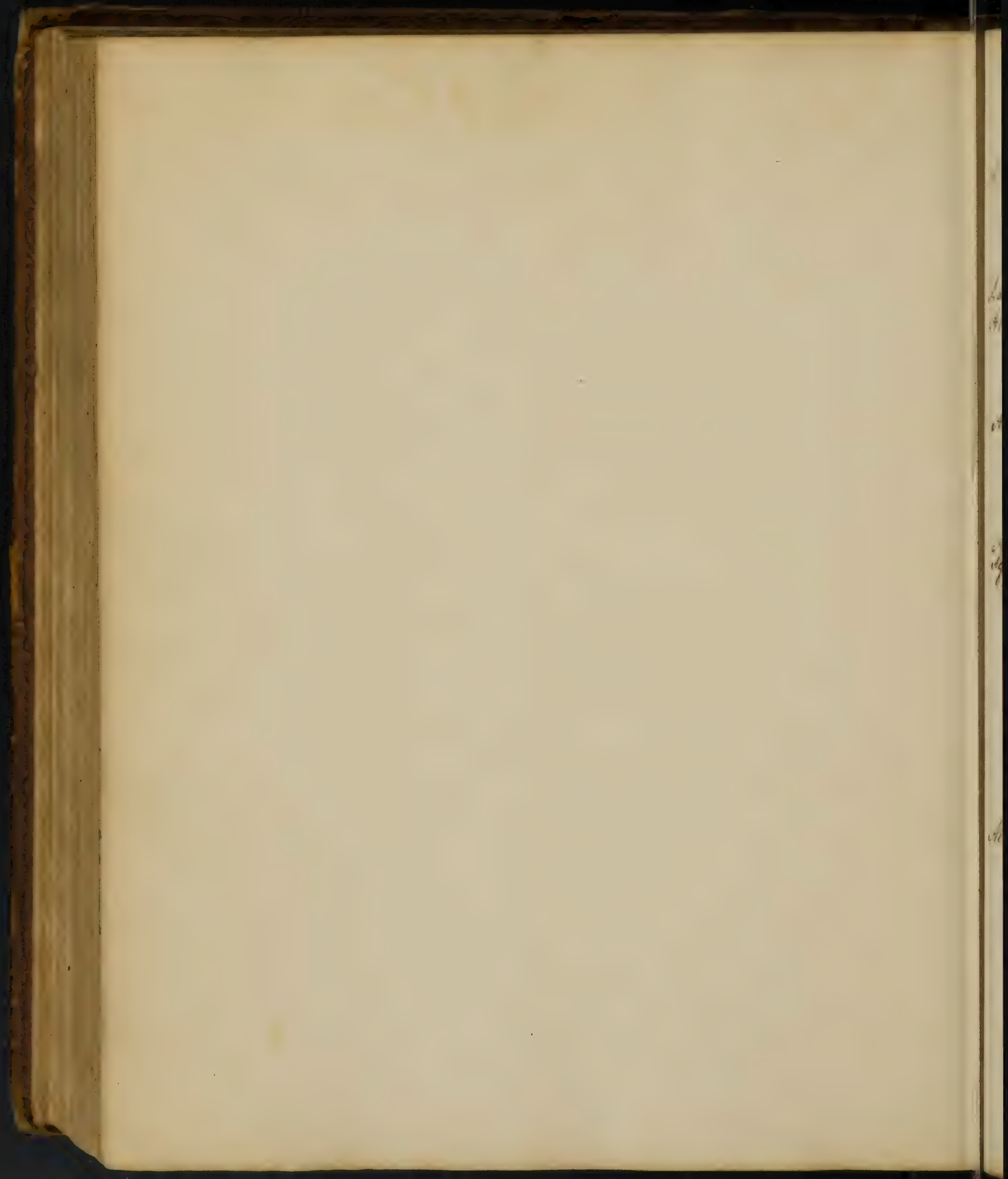












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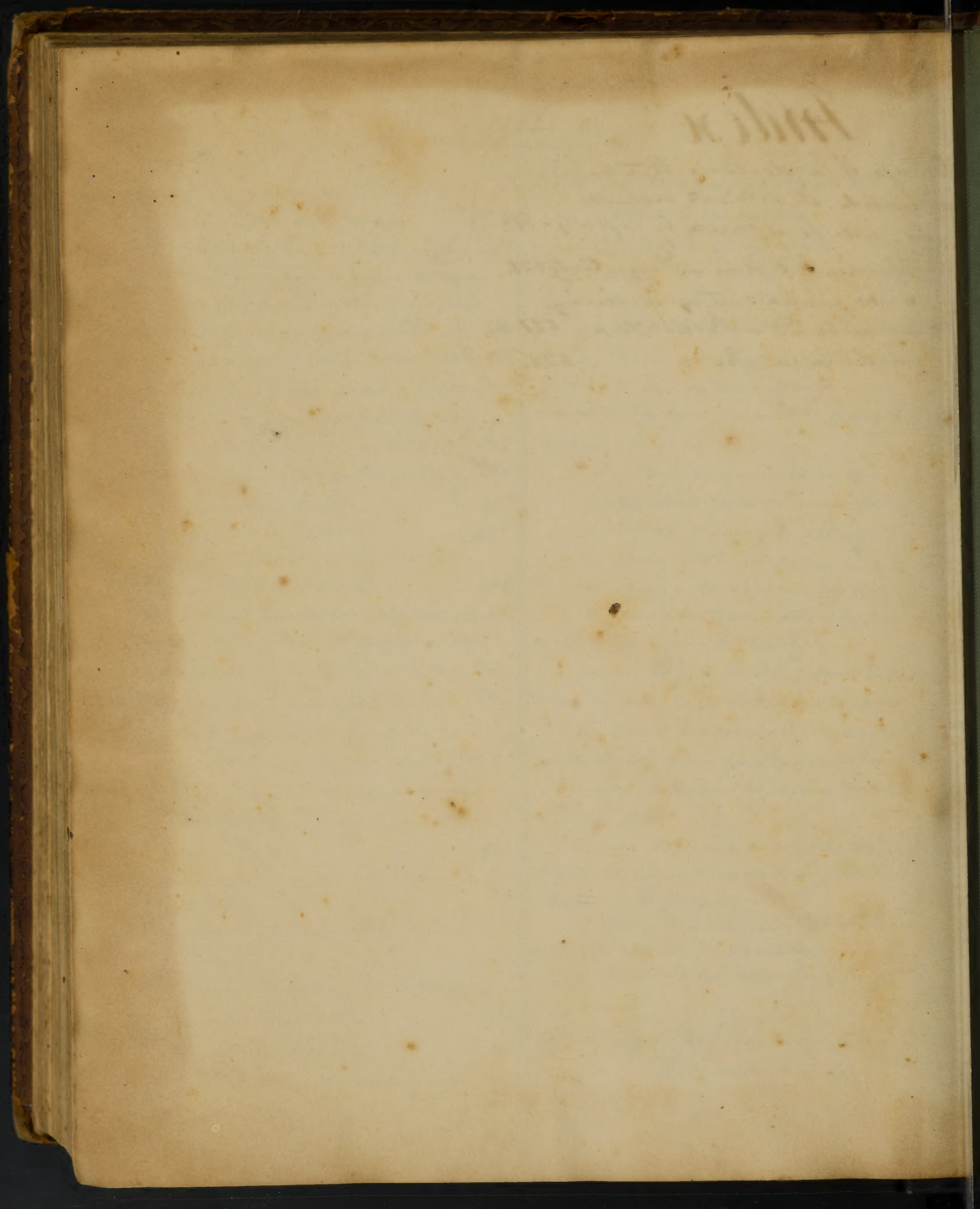
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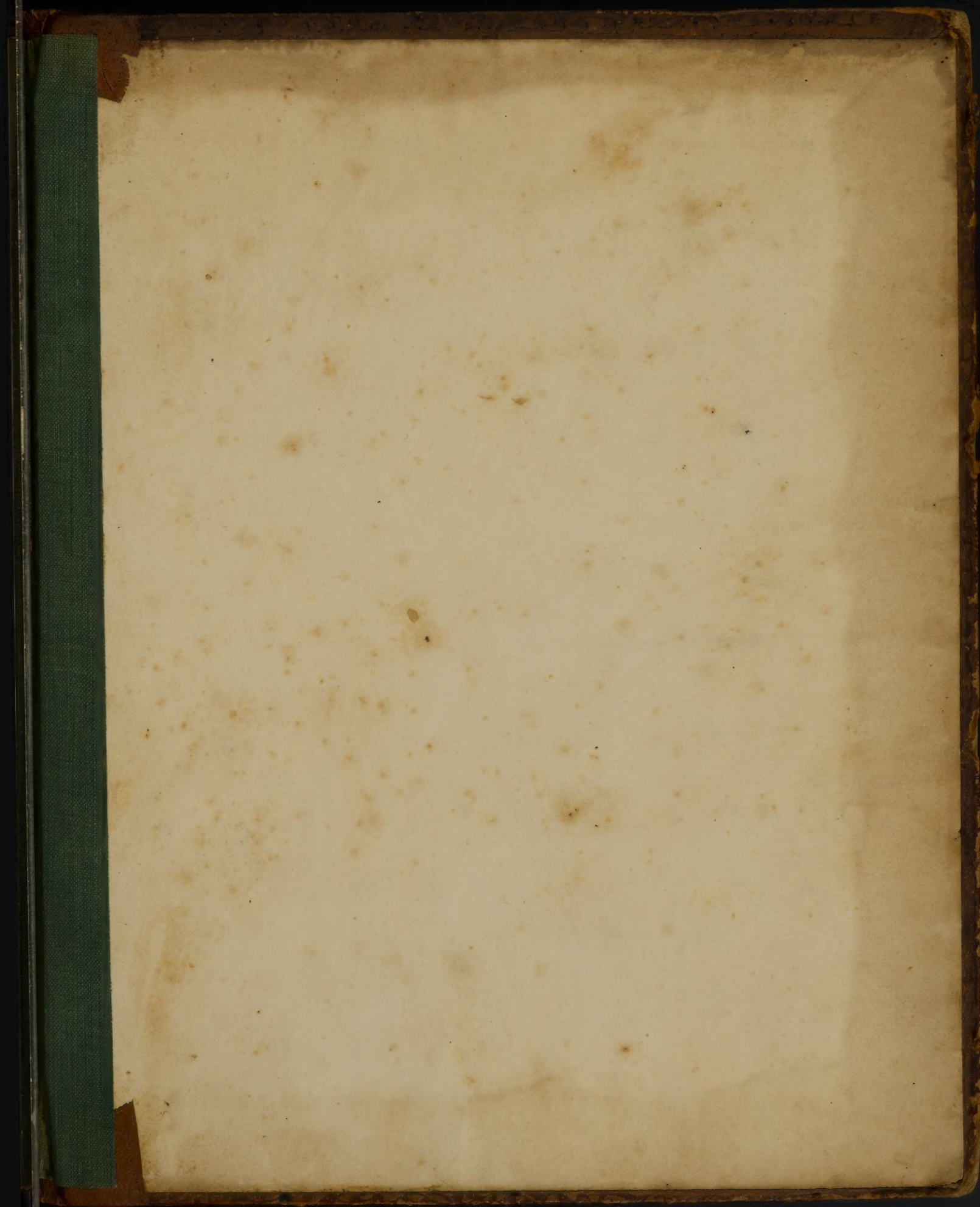
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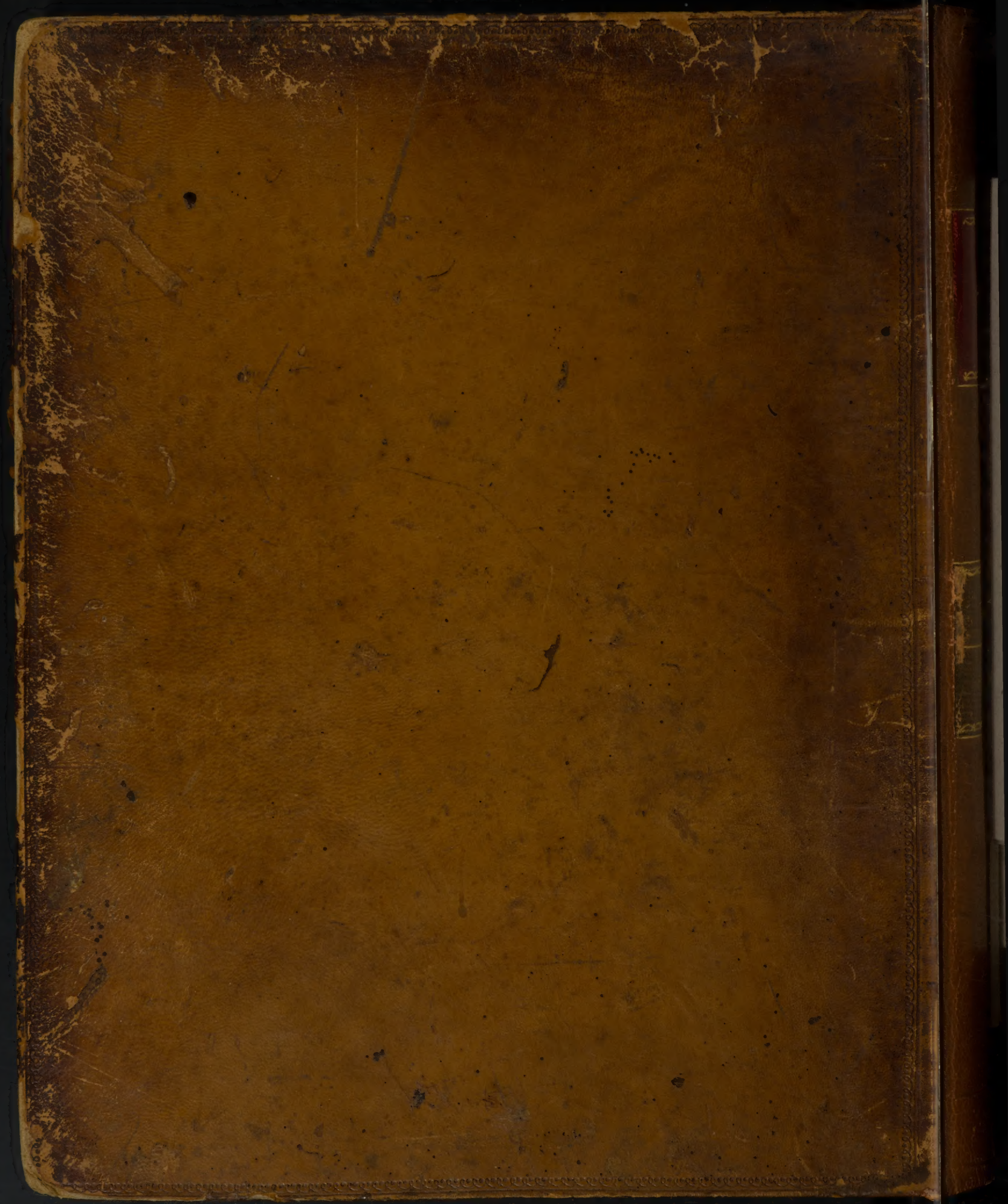
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